

Chaitali

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO. 4726 OF 2016

IN

FIRST APPEAL (ST.) NO. 29653 OF 2016

Narayan Dhondiram Methe

...Applicant/
Appellant

Versus

Shankar Dhondiram Methe (deceased thr.
L.Rs.) Malutai Shankarrao Methe and Ors.

...Respondents

Mr. Abhishek Nandimath i/b Umesh R. Mankapure for the Applicant/
Appellant.

Mr. Satish K. Kumbhar for Respondent Nos.1-A to 1-E.

CORAM : R.I. CHAGLA J
DATE : 5TH DECEMBER, 2022

ORDER :

1. Heard learned Advocate for the parties.
2. By this Civil Application, the Applicant is seeking condonation of delay of 7 years and 317 days in filing the First Appeal.
3. The Applicant has stated that the impugned order was passed on 3rd November 2018 by the Civil Judge, Senior Division, Sangli in Misc. Civil Application No. 88 of 1999. Being aggrieved with the

impugned order, the Applicant had filed Regular Civil Appeal No. 347 of 2011 before the District Court, Sangli. The Appellate Court / District Court, Sangli passed order below Exhibit-21 dated 17th September 2016 upon considering the view taken by this court in **Nola Jonathan Ranbise vs. Union of India [2014 (3) Bom. C.R.641]** that appropriate remedy challenging the impugned order, is filing an Appeal before the High Court by returned the papers for the Appellant to avail the proper remedy before this court. Accordingly, the First Appeal has been filed and present Civil Application taken out on 3rd October 2016 which is within the period for stay i.e. for 30 days period granted by the District Judge, Sangli for enabling the Appellant to file the Appeal before this court.

4. I have considered the averments in the Civil Application as well as noted that the Appellant had availed of the remedy of filing Appeal against impugned order in the lower court. This court in **Nola Jonathan Ranbise** (Supra) has found that the proper remedy would be the filing of Appeal before this court. It is to be noted that the stay which had been granted by the District Judge, Sangli was of 30 days from the order dated 17th September 2016 for the Appellant to avail of the proper remedy of filing Appeal before this Court. Prior to the

expiry of that period, the Appellant has filed the present First Appeal.

5. In view thereof, the Appellant requires to be granted opportunity of pursuing the First Appeal by condoning the delay.

Hence, the following order is passed. :

- i) The delay of 7 years and 317 days in filing the First Appeal is condoned.
- ii) The office shall take the First Appeal on file.
- iii) The First Appeal shall be served by the Appellant on the Respondents.
- iv) The First Appeal alongwith Civil Application No. 4727 of 2016 shall be placed on board on 13th December 2022.

[R.I. CHAGLA J.]