

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, AT NAGPUR.**

CIVIL REVISION APPLICATION NO. 38 OF 2022

(Mahadeo s/o Janglu Kamatkar and another ..vs.. Ashabai w/o Mahadeo Kamatkar and others)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. R.S. Nagpure, Counsel for the applicants.

CORAM : ROHIT B. DEO, J.

DATED : 01-04-2022

The applicants are respondents 1 and 3 in appeal preferred by non-applicants 1 to 5 challenging the judgment and decree dated 26-4-2018 rendered in Regular Civil Suit 953/2008.

2. The appeal was accompanied by an application for condonation of delay of thirty seven days. By the order impugned dated 09-12-2021, the learned appellate Court has condoned the delay.

3. The only submission which is canvassed by the learned Counsel is that the order impugned is passed behind the back of the applicants.

4. I note from the order-sheet placed on record that the present applicants and their counsel were absent on the date of the hearing. In this view of the matter, the applicants cannot be heard complaining that effective opportunity was not granted. That apart, in exercise of

revisional jurisdiction, I am not inclined to interfere in the exercise of discretion while condoning delay of thirty-seven days. It would neither be permissible nor appropriate for this Court to substitute its view for that of the appellate Court which has found sufficient cause for the delay in presentation of the appeal.

5. The learned Counsel invites my attention to a decision of the learned Single Judge in ***Holya Lasha Mahale and another v. Raghunath Holya Mahale, 2006(5) Mh.L.J. 80***. The said decision does not take the case of the applicants any further since on facts the learned Judge found that effective opportunity was not granted to adduce evidence and that the first appellate Court proceeded to pass order despite the fact that no praecipe of closure of evidence was placed on record. In the present matter, as I have noted, neither the applicants nor their counsel remained present, the civil revision application is dismissed.

JUDGE

adgokar