

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

CIVIL APPLICATION [CAS] NO.239 OF 2021

IN

SECOND APPEAL ST. NO.8201 OF 2020

[Purushottam s/o Kusanji Tekare .vs. Sau. Vidhya w/o Purushottam Tekare]

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

Court's or Judge's orders

Mr. N.R. Kanugo, Advocate for appellant,
Mr. P.W. Wathore, Advocate for respondent.

Coram : Smt. M.S. Jawalkar, J.

Dated : 01.08.2022

Present application is filed by the appellant for condonation of delay in filing Second Appeal. There is delay of 493 days.

It is contended that the order passed on 29.07.2019 in R.C.A. No.48/2016 and the appellant has received the certified copy on 05.08.2019. The appellant is serving as Sepoy in Border Road Organization, Indian Army posted at Leh (J & K). After receipt of certified copy, his counsel informed him that he has to challenge the impugned judgment within 90 days. It is submitted by the learned counsel for the appellant that the appellant was on leave in the month of January-2020 for 35 days and at that time Second Appeal came to be prepared. For these reasons, he could not file Second Appeal within limitation.

The learned counsel for the respondent vehemently opposed the application and states that the delay is not properly explained by the appellant.

For the reasons stated in the application, I am satisfied that there is no intentional or deliberate delay, however, the fact cannot be ignored that the delay is of 493 days. The inconvenience caused to the respondent can be compensated by imposing costs on the appellant. Accordingly, the application is allowed, subject to payment of costs of Rs.4,000/- to the respondent within two weeks. The respondent is entitled to withdraw the same. The delay in filing Second Appeal is hereby condoned.

Registry is directed to register the Second Appeal after deposit of costs. Accordingly, the application is allowed and disposed of.

The learned counsel for the appellant, on instructions, undertakes to deposit 50% of amount awarded under the Protection of Women from Domestic Violence Act, 2005 within eight weeks.

Both the parties are ready and willing for sending the matter to the learned Mediator. The learned counsel for the appellant seeks time to take appropriate instructions in the matter.

List the matter after two weeks.