

Uday S. Jagtap

Corrected as per Speaking to Minutes order dated 20.06.2023

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**INTERIM APPLICATION (ST.) NO. 6674 OF 2023
IN
FIRST APPEAL (ST.) NO. 21472 OF 2021**

Smt. Akkatai Hariba Chavan .. Applicant

Vs.

Shantaram Shahaji Chavan .. Respondent

.....
Mr. T.S. Ingale for the applicant
Mr. Utkarsh S. Desai a/w Mr. Sushant A. Khatake for the
respondent

.....

CORAM : PRITHVIRAJ K. CHAVAN, J.

DATED : 27th APRIL, 2023

P.C.

1. This is an application seeking condonation of delay of about 9 years and 120 days occurred in preferring the first appeal.

2. At the outset, learned Counsel for the applicant contends that earlier Regular Civil Appeal No.263 of 2012 was filed before the District Court at Sangli challenging the impugned judgment and order dated 31st March, 2012 passed by the trial Court in Misc.

Civil Application No.50 of 2004, which was within limitation.

3. At the time of hearing of the appeal before the learned District Judge, it was transpired that in view of the judgment of this Court in case of **Smt. Nola Jonathan Ranbhise Vs. Union of India**, reported in 2014(4) All MR 181, the appeal against the order of granting probate would lie before this Court.

4. As such, a permission was sought to withdraw the appeal from the District Court in order to prefer the appeal in this Court. It is submitted by the learned Counsel for the applicant that the appellants were prosecuting the remedy bonafidely before the District Court and, therefore, delay, if any, occurred in preferring this appeal before this Court, needs to be condoned.

5. The learned Counsel for the respondent objects on the ground that even after withdrawal of the appeal from the District Court, the judgment of the Division Bench of this Court was not brought to the notice of the District Court in 2007 itself.

6. Having considered the respective submissions across the bar, it would be just and proper to condone the delay as the delay is not

intentional but occurred for the reason that the appellants were prosecuting the remedy bonafidely before the District Court.

7. Interest of justice demands that the lis be adjudicated on merits and, therefore, delay of 9 years 120 days needs to be condoned.

8. Accordingly, the delay is condoned. The Application is disposed of.

9. Registry is directed to register the First Appeal and place it for admission on **20th June, 2023**.

10. This Court by an order dated 10th January, 2023 after hearing the learned Counsel, granted ad-interim relief in terms of prayer clause (a) until further orders. The same shall continue till the next date.

(PRITHVIRAJ K. CHAVAN, J.)