

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

Criminal Application (APPA) No. 78 of 2023

in

Criminal Appeal St. No. 101 of 2023

[Dhanraj Motiramji Bundele ..vs.. Nandkishor Liladhar Bundele]

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

Court's or Judge's orders

Mr. R. M. Tiwari, Advocate for the applicant/appellant
Mr. V. B. Bhise, Advocate for the non-applicant

CORAM : URMILA JOSHI PHALKE J.

DATE : 11-08-2023

Present application is for condonation of delay.

The applicant has preferred this appeal challenging the judgment dated 16-8-2022 passed by the Judicial Magistrate First Class, Akot, Court No. 2 in Summary Criminal Case No. 438/2018. The applicant is the original complainant who has filed the complaint under Section 138 of the Negotiable Instruments Act. After considering the evidence, the trial Court acquitted the respondent in Summary Criminal Case No. 438/2018 and, therefore, present appeal is preferred challenging the said order, however, there is delay of 60 days in preferring the appeal.

2. The applicant submitted that he was suffering from poor financial condition and, therefore, he could not approach to the Court as he has to make the financial

arrangement for engaging counsel and preferring the appeal. He is shouldering with the family responsibility of old aged parent, children and wife. His children are taking education and due to the poor financial condition, he could not prefer appeal within time. He runs a shop of laundry. Due to the pandemic condition, he suffered financial loss which is also one of the reason that he could not arrange for the finance to prefer the appeal.

3. Said application is strongly opposed by the learned counsel for the respondent on the ground that there is no sufficient and satisfactory reasons for condonation of delay, therefore, application deserves to be rejected.

4. Heard learned counsel for the applicant and learned counsel for the respondent. Perused the application. The reason mentioned in the application is that due to the poor financial condition, he could not arrange the finance to engage Advocate and to prefer the appeal, which appears to be sufficient and satisfactory reason. It is further well settled that while considering the delay condonation application, the Court has to adopt liberal approach and pedantic approach is not to be taken. It is for the parties to litigate their cause. In

view of that, application deserves to be allowed.

Accordingly, I proceed to pass the following order.

5. The application is allowed.

6. Delay caused of 60 days in preferring the appeal is condoned subject to costs of Rs. 2,000/- (Rupees Two Thousand Only) to be paid to the respondent.

7. On payment of the costs, application for seeking leave to file appeal is to be registered.

8. Stand over after four weeks.

JUDGE

wasnik