

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

CIVIL APPLICATION (CAO) NO. 206/2023 IN M.C.A. ST. NO.
0287/2023 IN RC NO. 237/2017 (FA ST. NO. 24644/2016)

Smt. Sandhyabai Wd/O Avadhutrao Naik And Others

Vs

State Of Maharashtra, Thr. Collector, Yavatmal And Others

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Mr V.N.Patre, Advocate for the applicants/appellants.

Mrs Shamshi Haider, AGP for the respondents/State.

CORAM : URMILA JOSHI-PHALKE, J.

DATED : 13/02/2023.

1. Heard.
2. By this application, the appellants are seeking condonation of delay of 1398 of days in filing the restoration application for restoring the appeal at its registration stage.
3. As per contention of the appellants, initially, the earlier counsel appointed by her preferred the appeal, challenging the judgment and order passed by the learned Reference Court. The Registry has raised some objections, however, inadvertently the earlier counsel did not remove the office objections. Hence, the matter came to be rejected by the Registrar (Judicial) of this Court vide order dated 18/07/2017.
4. Thereafter, the earlier counsel for the appellants are preferred the application while MCA St. No.

7287/2017 for restoration of the appeal. However, the application also came to be rejected vide order dated 18/07/2017.

5. Thereafter, another application for restoration of the matter along with condonation of delay came to be preferred by the counsel it is own affidavit. The said application was also rejected. Since the objections in the application has not been removed. Thereafter, the applicant has inquired about the progress in the matter and it is informed to her that the appeal is rejected by the order to Registrar.

6. Thereafter, she obtained the file from the earlier counsel and engaged the another counsel. As per her contention, the appeal is preferred by her for enhancement of the amount of compensation, however, due to the fault of the earlier the counsel, the earlier applications are rejected. She was not informed regarding the earlier rejection of the concerned applications, and after getting knowledge she engaged the another counsel and filed this application. For the default of the earlier counsel, she should not suffer and considering the same, the delay of 1398 days be condoned.

7. The said application is opposed by the learned AGP on the ground that the reasons mentioned in the application are not just and proper. Hence, the civil application deserved to be rejected.

8. Heard learned advocate Shri V.N. Patre for the appellants.

9. The detail reasons are mentioned in the application which shows that, as the office objections are not removed by the earlier counsel, registration of the appeal is rejected. Thereafter, without informing the applicants, she had preferred another application for restoration by filing his own affidavit which is not accepted by this Court and therefore earlier applications are rejected.

10. Thereafter, on inquiry by the present appellants, she informed about the rejection of the application. It is clear from the pleading of the applicants that, as she was not aware about the office objections and dismissal of the earlier application. She could not filed application at earlier stage. It is known fact that at the appellate stage the litigants are not attending the proceedings and the advocates to take care of the proceedings of their litigants by informing them regarding the progress of the matter which is not happened the present application and hence delay is caused.

11 It is also well settled that for the fault of the counsels, the parties should not suffer. The right of the compensation of the applicants are involved in this appeal and therefore, opportunity is to be granted to them to litigate their cause on merits.

12. In view of that, the delay be condoned on waiver of the interest for delayed period. For the reasons stated in the application, application is allowed. Delay is condoned.

Civil Application (CAO) No. 206/2023 is disposed of.

MCA Stamp No. 0287/2023

1. By this application, the appellants are seeking restoration of the appeal on its registration stage. It is apparent from the reasons mentions in the application that, the appellants have filed the appeal for enhancement of the compensation. Office has raised some objections which are inadvertently not noted by the learned counsel for the appellant and therefore, the appeal was rejected at registration stage.

2. The reasons mentioned in the application further states that, thereafter without informing the appellants, the earlier counsel filed the application by filing its own affidavit which is not accepted by this stage. Thus, it appears that due to the fault of the counsel, the appeal was dismissed.

3. By this appeal, the appellants are claiming for valuable right of getting compensation. Therefore, she should be permitted to litigate her cause on merits.

4. Besides, the waiver of the interest, the appellants shall pay costs of Rs. 500/- to be deposited with the Vidharbha Lady Lawyers Association, Nagpur.

5. Considering the inordinate delay in filing the delay condonation application, the application is allowed. Appeal be restored at its original stage, on removal of objections within a period of two weeks.

JUDGE