

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

CIVIL APPLICATION (O) NO.181 OF 2022

[Ninaji Namdeo Rakhonde and Ors. ..V/s.. The State of Maharashtra
and Anr.]

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

Court's or Judge's order

Shri S. G. Joshi, Advocate for the Applicants/Appellants.
Ms M. H. Deshmukh, AGP for the Respondents.

CORAM : VINAY JOSHI AND VALMIKI SA MENEZES, JJ.

DATE : 11th JANUARY, 2023.

. Heard.

2. This is an application under Section 5 of the Limitation Act, 1963, seeking condonation of delay of 1183 days caused in filing an application for restoration of First Appeal No.1036 of 2012, which was dismissed in default on 26.10.2016.

3. It is the Applicants' contention that when the appeal was come up for final hearing, the concerned clerk has inadvertently not brought the same to the notice of Advocate, which resulted into non-appearance and consequent dismissal of appeal. It is stated that in the month of February-2020, the Appellants enquired with his Advocate about the status of matter, on which it was checked and found that the matter was dismissed in default.

4. Shri Joshi, learned Counsel appearing for Applicants/Appellants would submit that the delay was unintentional and the *bona fide* mistake on the part of his office clerk.

5. We do not see any reason to doubt the cause canvassed for condonation of delay. However, the Applicant should have vigilant about his pending matters in the Court, and therefore, we deem it

appropriate to condone the delay of 1183 days by imposing certain costs.

6. In view of above, delay of 1183 days caused in filing an application for restoration stands condoned subject to Appellants depositing Costs of Rs.10,000/- to be paid to the High Court Legal Services Sub-Committee, Nagpur. The application stands allowed and disposed of.

7. Office to register the restoration application.

MISC. CIVIL APPLICATION (ST) NO.3943 OF 2020.

8. Heard.

9. Learned Assistant Government Pleader waives notice for Respondents No.1 and 2.

10. While considering the delay condonation application, we found it appropriate to condone the delay. The reasons stated in the delay condonation application reveal that the Appellants have appeared as well as filed a paper-book and it was ready for hearing. In order to give a proper opportunity to canvas the cause, the application is allowed.

11. The order of dismissal is recalled and First Appeal No.1036 of 2012 is restored on the file. This order of restoration of first appeal shall be subject to depositing the costs within two weeks from today as imposed by this Court while condoning the delay. The civil application stands disposed of.

(VALMIKI SA MENEZES, J.)

(VINAY JOSHI, J.)