

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

CIVIL APPLICATION NO. 741/2021 IN
MISC. CIVIL APPLICATION ST. NO. 5199/2020

Ramkrishna Hirasa Patvi (Parihar) Vs. Annaji Narayan Barad (Dead) and ors.

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

Court's or Judge's orders

Mr. S. G. Karmarkar, Advocate for applicant.

CORAM : ANIL L. PANSARE, J.
ARGUMENTS WERE HEARD ON :- 19.07.2023
ORDER PRONOUNCED ON :- 21.07.2023

By the present application, the applicant is seeking to condone the delay of about 12 years (4240 days) in filing the application for restoration of appeal.

2. The grounds put forth for condonation of delay, find place in paragraph nos. 2, 3 and 4 of the application, which read thus:

“2. It is submitted that at the time of filing of appeal, the applicant/appellant was residing at different address and he had engaged services of advocate N. R. Saboo. The learned advocate N. R. Saboo had sent communication to the applicant, however, due to the change in address, the applicant could not know the progress of the appeal and since the office objections were not removed, the matter came to be dismissed in default by order dt.27.06.2008.

3. It is submitted that recently on 31.01.2020, the applicant learnt that the appeal has been dismissed in default and the applicant's previous counsel had withdrawn the power. It is submitted that in this manner, the delay of about

4240 has occurred. The applicant was told that the final hearing of appeal would take about 4240 and therefore, in the meantime, the applicant did not contact his counsel. Therefore, the delay occurred.

4. The applicant is having a good case on merit and he was always diligent and interested in prosecuting the matter. It is submitted that if the matter is not restored the appellant would be put to irreparable injury.”

3. Thus the applicant states that for non removal of office objections the matter came to be dismissed in default by order dated 27.06.2008. The applicant then states that recently i.e. on 31.01.2020, he learnt that the appeal has been dismissed in default and the applicant's previous counsel has withdrawn the power. This is the only reason given by the applicant for condoning the enormous delay of about 12 years.

4. In my view, even if the liberal view is to be taken, it is impossible to condone the delay on such grounds. The applicant's approach remained casual prior to the dismissal of appeal and subsequent thereto as well. No case is, therefore, made out by applicant for condonation of delay.

The application is accordingly dismissed.

(Anil L. Pansare, J.)