

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

**WRIT PETITION NO. 6407 OF 2018**

Smt. Sundarabai Baliram Vathodekar,  
aged about 75 years, Occu : Agriculturist,  
R/o. Zapatkheda, Tq. Babhulgaon,  
Distt. Yavatmal.

.... **PETITIONER**

**// VERSUS //**

1. Sahebrao Shankarrao Gadekar,  
aged about 41 years, Occu. Labour,
2. Sou. Hirabai Vasantrao Kumare,  
Aged about 43 years, Occu. Labour.
3. Sou. Mirabai Pundlik Malande,  
aged about 45 years, Occ. Labour,  
R/o. Mohammadpur, Tq. Babhulgaon,  
Distt. Yavatmal.
4. Sou. Tarabai Kisanrao Palsekar,  
Aged about 38 years, Occ. Labour,  
R/o. Bisani, Tq. and Distt. Yavatmal.
5. Smt. Shantabai Babarao Gadekar,  
aged about 38 years, Occ. Labour,  
R/o. Bothali (Kinhala), Tq. Arvi,  
Distt. Wardha.
6. Laxman Babarao Gadekar,  
aged about 19 years, Occu.: Student,
7. Rameshwar Babarao Gadekar, Minor

8. Ku. Durga Babarao Gadekar, Minor

Respondent Nos. 7 and 8 are minor  
through guardian mother Respondent  
No.5 and Respondent Nos. 6 to 8 all  
R/o. Bothali (Kinhala), Tq. Arvi,  
Distt. Wardha.

.... RESPONDENTS.

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Shri Rahul S. Kurekar, Advocate for Petitioner.  
Shri S.D.Borkute, Advocate for Respondent No.1.

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CORAM : ANIL S. KILOR, J.  
DATED : JUNE 14, 2023.

ORAL JUDGMENT :

1. Heard.
2. **RULE.** Rule made returnable forthwith. Heard finally by consent of the learned counsel for the parties.
3. The order dated 04/10/2017 passed below Exh.1 by District Judge-3, Yavatmal in M.J.C. No. 24 of 2015, rejecting the application for condonation of delay, is under challenge in this writ petition.
4. There is delay of 1 year 5 months and 8 days in filing the appeal against the judgment and decree passed in Regular

Civil Suit No. 18 of 2010, whereby the suit for partition was decreed on 17/09/2014 against the petitioner.

5. The learned lower appellate Court, while rejecting the application, has recorded findings in paragraph Nos. 5 and 6 of the impugned order, which read thus :

*“5. Further more when applicant come to know about the decree on 5/2/2015 then what she has done upto 16/2/2015 has not been explained by her. Applicant received the certified copy of judgment and decree on 7/03/2015, then what she had done up to 19/03/2015 has not been explained in the application.*

*6. The suit before the learned Trial Court was pending for 2 years and 5 months. Applicant did not turn up to look after her case for over such long duration. She has sleep over her right to get information of her case. The right accrued to the Non-applicants cannot be taken away by ignoring the lazy conduct of the Applicant. Each day delay has not been explained. She also did not explain what prevent her to consult with her counsel to know about the progress of her case. Therefore, the ground mentioned in the application of condonation of delay is not satisfactory. ...”*

6. Admittedly, the petitioner is 75 years old lady and by occupation she is an agriculturist residing in a small village. It is the case of the petitioner that the petitioner is a simple lady and is

not having knowledge of the proceedings of the Court or she was not properly informed or advised and therefore, delay of 1 year 5 months and 8 days was caused in filing the appeal.

7. The learned counsel for the respondents has strongly opposed the present writ petition on the ground that the delay has not been explained by the petitioner as observed by the learned lower appellate Court. He, therefore, submits that the present petition may be dismissed.

8. I have perused the record and the impugned order.

9. Bare perusal of the impugned order would reveal that the lower appellate Court has not considered the fact, particularly age of the petitioner, further she resides in a village and the reasons stated in the application that she was not informed about the impugned judgment and decree and further she was not properly advised about the steps to be taken in the matter. The impugned order passed by the learned lower appellate Court is cryptic and much importance has been given for not giving day to day explanation for the delay.

10. It is well settled law that the Court shall adopt pragmatic and liberal approach in such matters. In these circumstances, I am of the opinion that the impugned order needs to be quashed and set aside.

11. Accordingly, I pass the following order:

- i) The Writ Petition is allowed.
- ii) The impugned order dated 04/10/2017 passed below Exh.1 by District Judge-3, Yavatmal in M.J.C. No.24 of 2015 is hereby quashed and set aside, consequently the application for condonation of delay caused in filing the appeal, is allowed.

Rule is made absolute accordingly. No order as to costs.

**JUDGE**

*RRaut..*