

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

CIVIL APPLICATION (CAO) NO. 545/2023 IN M.C.A. ST. 6898/2023 IN
FIRST APPEAL NO. 379/1998 (D)

Baliram S/O. Yamaji Pawar And Others Vs The State Of Maharashtra Others

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

Court's or Judge's Order

Mr S.V. Ingole, advocate for the applicants.

Ms. T.H. Udeshi, AGP for the respondent Nos. 1 to 3.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 17/04/2023.

1. This application is for condonation of delay in filing the restoration application.
2. Ms T.H. Udeshi, learned AGP waives service of notice on behalf of respondent Nos. 1 to 3.
3. As per the contention of the applicants, the appeal is dismissed in default, as the applicants failed to appear the proceedings when it was fixed for hearing. The delay of 3747 days is caused in preferring the application.
4. As per the contention of the applicants, his clerk of the counsel inadvertently miss to mark the matter, and therefore, counsel failed to attend the same. The learned advocate was unaware of the order passed by this Court, and therefore, the delay is caused. Another reason raised is that applicant No.1 is an old and illiterate farmer living in the remote village of Yavatmal District. He was looking

after the matter, however, his advocate expired in June-2022, therefore, he could not receive the interpretation regarding the dismissal of the appeal, and therefore, the delay is caused.

5. The said application is strongly opposed by the respondents on the ground that the delay is not properly explained. Admittedly, the huge delay is caused in filing the restoration application. However, considering the reasons, applicant No.1, was looking after the matter. He is a resident of village Mokh, Tq. Digras, District Yavatmal. Admittedly, the litigants are not attending the matter, at the appellate stage and they depend upon the advocate.

6. It is apparent that the learned advocate Mr D.G. Patil expired in June-2022, and therefore, the applicant could not receive the information regarding the dismissal of the appeal. The reasons mentioned by the applicant appear to be just and reasonable. Moreover, it is well settled that while considering the delay application, a liberal approach is to be taken to do substantial justice..

7. In view of the reasons mentioned in the application, the delay deserves to be condoned, subject to the waiver of the interest from 09/12/2010 till 17/04/2023.

Civil Application is **disposed of**.

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For the reasons mentioned in the application, the appeal is restored on its original stage.

2. Applicant to add Executive Engineer, Arunawati Project as a necessary party, being an acquiring body as respondent No.4.
3. After carrying out the amendment, the appeal be placed for final hearing, as the appeal is of the year 1998.
4. Stand over after **Summer Vacation**.

JUDGE