



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

CIVIL APPLICATION (CAF) NO. 2646 OF 2021 IN
FIRST APPEAL (ST) NO. 13402 OF 2021

Vishal Kumar Basantkumar Jain VS. The State of Maharashtra and others.

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions Court's or Judge's orders.
and Registrar's Orders.

Mr A. J. Gilda, Advocate the appellant
Mr M. A. Kadu, AGP for State

CORAM : G.A. SANAP, J.
DATE : SEPTEMBER 29, 2023.

Learned AGP appears for respondent Nos. 1, 2 and
3. Heard learned Advocates for the parties.

2. This is an application for condonation of delay caused in filing appeal against the impugned judgment and award dated 27.07.2017 passed by the learned Civil Judge Senior Division, Gondia. It is stated that the appellant was advised by his Advocate to file review application. Accordingly, the review application was filed on 29.09.2017. The Advocate then realized that review was not maintainable against the impugned judgment and award. Therefore, the review application was withdrawn on 06.10.2021. The appeal has been filed on 21.10.2021. It is submitted that the review application was prosecuted with bonafide belief that it was maintainable. It is submitted that

therefore while calculating the period of limitation time taken in prosecuting the review application is required to be excluded.

3. I have heard learned Advocate Mr A. J. Gilda for the appellant and Mr M. A. Kadu for the State. Perused the record and proceedings.

4. The review application was pending from 29.09.2017 to 06.10.2021. It is stated that the said proceedings was prosecuted with bonafide belief that the review application was maintainable. It is to be noted that there is no objection, as such, from respondent Nos. 1, 2 and 3 that the said proceeding was not bonafide and prosecuted without due diligence. In the facts and circumstances, if the time taken for prosecution of review application is excluded it would show that the appeal is filed within limitation. In the facts and circumstances, the period taken in prosecution of review application is to be excluded. Accordingly the application is **allowed**, with the above observation.

5. The first appeal be registered.

6. The civil application stands **disposed of**, accordingly.

(G. A. SANAP, J.)