

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

CIVIL APPLICATION (CAS) NOS. 35 OF 2023
IN
SECOND APPEAL (ST.) NO. 21951 OF 2022

SHRI PRADIP S/O. MOTIRAMJI SHENDE

...VERSUS...

SAU. BEBIBAI W/O. RATANRAO LAKSHANE

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

Court's or Judge's order

Shri J.R.Kidilay, Advocate for appellant/applicant.
Shri M.R.Joharapurkar, Advocate for respondent.

CORAM : SMT. M. S. JAWALKAR,J.

DATE : 24th APRIL, 2023

The present application is filed for condonation of delay in filing Second Appeal.

2. Heard both the parties at length.

3. It is claimed by the applicant that he could not file the appeal within limitation as he was victim of Covid-19 pandemic and was hospitalised for 7 days. He also submitted that, due to some post Covid effects, he required to take treatment of the doctor continuously.

4. Learned counsel for the respondent vehemently opposed the application and submitted that the appellant/applicant is already suffered with order for non-condonation of delay in Regular Civil Appeal as there was a delay of about one year. However, in spite of this order, he again filed the appeal belatedly. The delay was not

properly explained, therefore, the said order came to be passed on 14/03/2022. Thereafter the present appeal came to be filed on 23/12/2022. The applicant was admitted in the month of September, 2021, which is much earlier before passing of impugned order. He has not applied for certified copy till 17/11/2022. His first prescription is placed on record which is of May, 2022, but there is no explanation for the period from 14/03/2022 till May, 2022. Moreover, he was attending the hospital and had not applied for certified copy till 17/11/2022. However, there is no prescription directing him to take bed rest.

5. I have gone through the contentions of the parties and the documents/medical documents placed on record. It appears that the applicant was not diligent which he ought to be once he suffered with the order of non-condonation of delay. However, taking into account the other circumstances, I am inclined to condone the delay, subject to costs. As such, the application is allowed.

6. Delay in filing Second Appeal is hereby condoned, subject to costs of Rs. 10,000/- to be paid to the respondent within a period of two weeks or to deposit in the Court.

7. Registry is directed to register the Second Appeal after payment of costs as referred above.

8. Accordingly, the application is disposed of.

(Smt. M.S. Jawalkar, J.)