



**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD**

**CIVIL APPLICATION NO. 16014 OF 2022
IN SA/338/1995**

MALLIKARJUN NARSINGA TUGAVE AND OTHERS.

VERSUS

**NARSING RANOBA TUGAVE DIED LRS ALREADY ON RECORD AS
APPELLANTS AND ANOTHER**

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Mr. H. B. Nandagavale, Advocate h/f Mr. V. G. Sakolkar, Advocate
for applicants

Mr. H. V. Tungar, Advocate h/f Mr. C. R. Deshpande, Advocate for
Respondent No.2

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CORAM : Y. G. KHOBRAGADE, J.

DATE : 12 MARCH 2024

PER COURT :-

1. Mr. Nandagavale, the learned Counsel holding for the
learned Advocate Mr. V. G. Sakolkar and the learned Advocate
Mr. H. V. Tungar, for non-applicant No.2.

2. Heard at length.

3. The applicants have filed the present application
seeking condonation of delay of 3858 days caused in filing
application for restoration of appeal, which came to be dismissed
vide order dated 27.09.2011.

4. The learned Counsel appearing for the applicants submits that on 27.09.2011, the appeal was listed on board for hearing. However, the Court was pleased to pass the order to dispense with the print of the paper-book, but had directed the learned Counsel for the appellants to supply private paper-book within a period of 12 weeks, failing which the matter shall be dismissed without reference to the Court. However, inadvertently, the then Counsel who was appearing for the applicants failed to furnish private paper-book within the stipulated period. Ultimately, the said appeal was dismissed. It is further submitted that the applicants are illiterate, having no knowledge of legal proceeding and their Counsel did not inform them about the status of the matter and when they approached the said Counsel on 09.08.2022 and inquired about the matter, then they came to know about dismissal of their Second Appeal. Thereafter, they engaged a new Counsel on 09.08.2022 and then preferred this application along with application for restoration of appeal. Therefore, according to the applicants, they have explained the delay substantially, which is bona-fide, hence prayed for condonation of the delay.

5. The non-applicants have filed affidavit-in-reply and strongly opposed the application on the ground that the applicants were not diligent while prosecuting the matter, so also though the applicants have made allegations against their lawyer and this Court vide order dated 10.10.2023, 06.11.2023, 11.12.2023 and lastly vide order dated 24.01.2024, the earlier Counsel of the applicants were directed to file affidavit, but all these orders have not been complied. So also the applicants are failed to explain the delay of more than ten years. Hence, prayed for rejection of the application.

6. It is well settled principle of law that the litigants should not be deprived from receiving the substantial justice from the Court. However, at the same hand, the litigant should be vigilant about their litigation. The applicants prayed for condonation of delay of 3858 days which is more than ten years, only on the ground that on 27.09.2011, their matter was listed on board and this Court had directed them to file private paper-book within a period of twelve weeks. However, their Counsel failed to file private paper-book within a period of twelve weeks. However, their Counsel failed to file private paper-book within the stipulated period. The order dated 27.09.2011, reads as under:-

- “1. Heard.*
- 2. Print dispensed with.*
- 3. The learned Advocate for the appellants shall supply private paper-book within 12 weeks. In case of default, the appeals shall stand dismissed without further reference to the Court.*
- 4. Copy of this order shall be put on Notice-Board of Advocates’ Bar Association, High Court, Aurangabad.”*

7. Since the applicants failed to comply the said order, the Second Appeal of the appellants came to be dismissed for non compliance of the order. Though the applicants have stated that, first time on 09.08.2022, they approached their earlier Counsel and then they came to know about dismissal of their Second Appeal. However, the appellants have not assigned any reason as to why they did not approach their Counsel to know status of the matter from 27.09.2011 to 09.08.2022. Therefore, this fact itself depicts that the applicants are not vigilant litigants and they get kept quiet for more than ten years. Nonetheless, the applicants failed to file affidavit of their earlier Counsel, who allegedly not informed the order of this Court to them. Merely, the applicants stated that they first time came to know about dismissal of their matter for want of prosecution on 09.08.2022, is not sufficient ground to condone the delay of more than ten years.

8. It is the settled principle of law that the litigant who seeking for condonation of delay, required to explain the delay of each and every day, bona-fidely and sufficiently. However, in case in hand, no such bona-fide and sufficient delay is found. Hence, the present application deserves to be dismissed. Accordingly, I proceed to pass the following order:-

ORDER

Civil Application No. 16014 of 2022 in Second Appeal
No.338 of 1995 is hereby dismissed. No order as to costs.

[Y. G. KHOBRADE, J.]

SMS