

IN THE HIGH COURT OF JUDICATURE AT BOMBAY***CIVIL APPELLATE JURISDICTION*****WRIT PETITION NO. 508 OF 2020**

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Kausalya Laxman Kedare**..... Petitioner****VERSUS****Chabu Mangaji Gajankush,
(since deceased Thru Legal heirs)
Papabai Chabu Ankush & Ors.****..... Respondents**

Mr.Chetan S. Damre for the Petitioner.

Mr.Amol Wagh i/b. Ms.Chaitali Bhogle for the Respondent Nos. 1,
2, 4, 6 to 9.**CORAM: RAJESH S. PATIL, J.****DATE : 17 JANUARY, 2024****P.C. :-**

RULE. By consent, Rule made returnable forthwith.

2. This writ petition is filed challenging an order dated 9 October, 2019 passed below Ex.1 by the District Judge, Malegaon, District Nashik in Miscellaneous Civil Application No. 64 of 2017. The said Miscellaneous Civil Application was filed for seeking condonation of delay in filing application for restoration of Appeal No. 187 of 2012.

3. It is the case of the petitioner that she is a rustic villager

and she has to move from one place to another and to stay at different villages to earn her daily bread and butter as she has no help from any of her distant relatives. She further submits that she was not in contact with her advocate whom she believed, would take care of her appeal pending before the District Court. Only after she got knowledge about the dismissal of the appeal, she contacted her present advocate who filed application for restoration of appeal along with delay condonation application. She further stated that she has good case of merits.

4. Learned counsel appearing for the landlord submits that the suit was decreed under the grounds of arrears of rent. He submits that there is no merit in the appeal filed by the original claimant. He further submits that advocate appearing for the petitioner has given no reason for not appearing in the appeal for such a long time. He, therefore, opposes this petition.

5. Heard and gone through the contents of the application for condonation of delay filed before the District Court.

6. Hence, the delay requires to be condoned in filing appeal before the District Court.

7. Rule is made absolute and the writ petition is disposed of with following directions :-

(a) The impugned judgments and order dated 9 October, 2019 passed in Miscellaneous Civil Application No. 64 of 2017, is quashed and set aside.

(b) Miscellaneous Civil Application No. 64 of 2017 is allowed. The impugned judgment and order dated 26 October, 2016, is quashed and set aside.

(c) The District Court should take Civil Appeal no. 187 of 2012 on file and hear the same on its merits. Since this Court has not decided the matter on merits of the civil appeal, Civil Appeal

No. 187 of 2012 be decided on its own merits. All contentions of parties are kept open.

(d) The District Court, Malegaon should make an endeavour to hear and dispose of the Civil Appeal No. 187 of 2012 as expeditiously as possible and in any case within a period of four months after receipt of the order of this Court.

(e) Till the hearing and disposal of the Civil Appeal No. 187 of 2012, the impugned judgment and decree passed by the Trial Court is stayed.

[RAJESH S. PATIL, J.]