



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

CIVIL APPLICATION NO. 35 OF 2021
IN SECOND APPEAL ST. NO. 928 OF 2021

(Ashok Baburao Muktewar Vs. Prakash Baburao Muktewar (dead) through LRs & Ors.)

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

Court's or Judge's orders.

Shri U.A. Gosavi, Counsel for the applicant.
Shri A.M. Quazi, Counsel for respondent no.1.

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CORAM : ANIL L. PANSARE, J.
MAY 7, 2024.

The applicant, who is a legal practitioner, has filed application under Section 5 of the Limitation Act, 1963 (for short "Act of 1963"), seeking condonation of delay of 640 days in filing appeal against the judgment and decree dated 1/1/2019 passed by the District Judge – 12, Nagpur in Regular Civil Appeal No. 898/2012.

2] The reasons are assigned in paragraphs 2 and 3 of the application. The applicant states that he is a patient of otitis middle ear since the age of one year. He is under medication since childhood, which has affected his intellectual abilities. He further states that when he suffer from attack, he loses his control over the brain. He, therefore, could not challenge the order before this Court. He further states that at the fag end of the year 2019, he though partially recovered participated in the execution proceedings. He states that after December, 2020, he started moving out and consulted Senior Advocate for seeking opinion on the matter and accordingly decided to file appeal.

3] The reasons so assigned clearly indicate that in the year 2019, because of medication, the applicant could not attend the Court proceedings and only at the fag end of the year 2019, he partially recovered from the illness and thereafter participated in the execution proceedings.

4] The learned Counsel for respondent no.1 has filed on record Roznama of various cases in which the applicant appeared before District Court. The first Roznama is dated 23/1/2019. It pertains to proceedings under the Motor Vehicles Act. The applicant appeared before the Tribunal on 23/1/2019, 31/1/2019 and 1/4/2019. He also appeared before the Joint Civil Judge Senior Division, Nagpur on 22/1/2019 and then on 26/3/2019. He also appeared before other Court, i.e., the Joint Civil Judge Senior Division, Nagpur. His appearance was noted on 12/6/2019, 7/9/2019 and 5/10/2019.

5] Thus, the learned Counsel for respondent no.1 has placed on record documents to show that the applicant has taken a false plea to justify the delay and accordingly prayed for rejection of application.

6] There is substance in the submission so made by the learned Counsel for respondent no.1. The applicant, who is a legal practitioner, is not only a party before the Court but is also an Officer of the Court. The Court will expect from such litigants, a high standard of professionalism. There is no scope for the litigants, much less a practitioner Advocate, to take recourse to false plea to come out of rigor of Section 5 of the Act of 1963.

7] The Hon'ble Supreme Court in the case of *Pundlik Jalam Patil (Dead) By LRs. Vs. Executive Engineer, Jalgaon Medium Project and Another [(2008) 17 SCC 448]* has held that an incorrect statement made in an application seeking condonation of delay itself is sufficient to reject the application without any further enquiry as to whether the averments made in the application reveal sufficient cause to condone the delay. The Court further held that a party taking a false stand to get rid of the bar of limitation should not be encouraged to get any premium on the falsehood.

8] The applicant, therefore, does not deserve any leniency. There is no substance in the application. The same is accordingly rejected.

(ANIL L. PANSARE, J.)

Sumit