



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

CIVIL APPLICATION NO. 296 OF 2021
IN SECOND APPEAL ST. NO. 4898 OF 2021

(Sau. Malan Dilip Mohurle Vs. Smt. Anandabai w/o Gangaram Mohurle (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 S.T. Harkare, Counsel for the applicant.

Shri N.S. Khandewale, Counsel for respondent nos. 1 to 5.

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

The applicant has filed application under Section 5 of the Limitation Act, 1963 (for short "Act of 1963") seeking condonation of delay of 395 days in filing appeal against the judgment and decree dated 15/11/2018 passed by the District Judge – 1, Chandrapur in Regular Civil Appeal No. 131/2009.

2] The learned Counsel for the applicant, by referring to paragraphs 2 and 3 of the application, submits that the local Counsel has never informed the applicant about the decision rendered in First Appeal. She came to know of dismissal of appeal in second week of September, 2019.

The applicant, however, has not disclosed the source of knowledge.

3] The learned Counsel further submits that the applicant approached local Counsel and enquired about the same and thereafter demanded case papers

back. The Counsel refused to handover papers. The applicant, therefore, applied for certified copy of relevant documents on 20/9/2019. She received the same on 7/10/2019. She engaged Counsel at Nagpur and handed over papers to him. The Counsel thereafter sent papers to the applicant for swearing-in affidavit. The subsequent delay has occurred because of the outbreak of COVID-19 pandemic.

4] As could be seen, the applicant has not disclosed as to when did she engage Counsel at Nagpur, when were papers handed over to him, when was the affidavit prepared by the Counsel and when did she receive the affidavit for swearing. Thus, there is absolutely no explanation as necessary under Section 5 of the Act of 1963.

5] More importantly, the applicant has taken a contrary stand by filing additional affidavit. She states that after receiving certified copy on 7/10/2019, she approached local Counsel for filing Second Appeal. The Counsel assured her of taking necessary steps. However, when she made enquiry with the local Counsel in the month of March, 2020, she found that no steps were taken. She, therefore, collected case papers and handed over to the Counsel at Nagpur.

6] Thus, in the application, the applicant has averred that after receiving certified copy, she engaged Counsel at Nagpur, who in turn, has prepared affidavit, while in the additional affidavit, she has taken a stand that she approached the local Counsel, who assured her

of taking necessary steps but did not do so till March, 2020.

7] Further, the applicant, in her application, has pleaded that when she approached local Counsel, he refused to handover papers to her and, therefore, she applied for certified copy in September, 2019. Despite such status, if additional affidavit is to be believed, the applicant, who is a Police Officer, has again approached the local Counsel. The stand taken in additional affidavit and the stand taken in the application do not go together.

8] It is unfortunate that the applicant, who is a Police Officer, has blamed local Counsel for not informing her about the decision rendered in First Appeal. She has not whispered a word as to why did she not enquire or pursued the appeal before the First Appellate Court. She further states that the local Counsel refused to handover papers. Then she states that she approached the Counsel at Nagpur, who prepared affidavit and sent back to her for affirmation. She then takes a u-turn by filing additional affidavit. She again blamed local Counsel for not taking necessary steps. She does not explain as to why did she again approached the local Counsel. Thus, the applicant has made a false statement.

9] 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.

10] In any case, the applicant has not shown sufficient cause to condone the delay. There is, thus, no substance in the application. The same is accordingly rejected.

(ANIL L. PANSARE, J.)

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