



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR**

**CIVIL APPLICATION (CAS) NO.325 OF 2021
IN SECOND APPEAL (ST) NO.6244 OF 2021
MOHAMMAED NAZIR S/O MOHAMMED AMIN
VERSUS**

SHAMIM BANU W/O ABDUL JABBAR (DEAD) THROUGH LRS.

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Shri Vivek Awchat, Advocate for the appellant/applicant
Ms Sharda Tiwari, Advocate for the respondent Nos.1 to 6

**CORAM : M.W. CHANDWANI, J.
DATE : 19.09.2024**

1. By the present application, condonation of delay of 1180 days in preferring Second Appeal is sought.
2. The contention is that the Regular Civil Appeal came to be dismissed on 14.11.2017 by the First Appellant Court. The appellant was not aware of passing the impugned judgment and order in the appeal, since the entire things were left on the counsel and the counsel did not inform about dismissal of the appeal. Only the appellant came to know about dismissal of the appeal when he received notice on 27.02.2021 in Regular Darkhast (RD) No.267 of 2019. Thereafter the appellant started to collect the papers and the present Second Appeal came to be filed on 07.05.2021.
3. It is a matter of record that from 15.03.2020 the pandemic stated in the entire country and the Hon'ble Supreme Court, in Suo Motu Petition, directed that while computing the period of

limitation, the period from 15.03.2020 till 28.02.2022 be excluded. Therefore, if this period is excluded, then there is delay of almost two and half years.

4. The present application is opposed by the respondents on the ground that there is a considerable delay of almost three years and therefore, application be rejected.

5. It is desirable that the matter should be heard on merits rather dismissed it on technical grounds. No doubt there is a delay of two and half years in preferring the Second Appeal. Nothing has been brought on record that the appellant was aware about dismissal of the appeal prior to 27.02.2021, when he received the notice of execution proceedings. Even nothing on record suggests that the delay is intentional one.

6. Considering that, no prejudice would be caused to the respondents, if the delay is condoned. Considering the factual aspects of the case, I think the delay can be condoned, subject to payment of cost. Hence, I pass the following order:

(i) The application is **allowed and disposed of**.

(ii) The delay, in filling the Second Appeal, is hereby condoned, subject to payment of cost of Rs.10,000/- to the counsel for the respondents. The appeal be registered.

[JUDGE]