



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

CIVIL APPLICATION (CAS) NO.682 OF 2021 IN
SECOND APPEAL ST. NO.10367 OF 2020

Mangala W/o Jagdeo Rayane .Vs. Surekha @ Rekha Shivaji Dhore and others

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

Court's or Judge's Order

Shri A.M. Tirukh, Advocate for appellant.

Shri N.B. Kalwaghe, Advocate for respondent Nos.4 to 7.

CORAM : SANJAY A. DESHMUKH, J.

DATED : 28/06/2024

1. This is an application for condonation of delay of 1941 days caused for filing appeal.
2. The applicant contended that, she is old aged woman and her son was taking every decision in her interest in respect of the litigation. Because of her old age, she was not in a position to understand the procedure of Court. Her son did not tell her about the necessity of filling of the appeal before this Court. She was deliberately kept in dark. When she asked her son about the litigation, her son never discussed anything about it. The documents relating to the litigation were not shown to her. The information about the judgment dated 19.12.2014 which was decided by the High Court in Second Appeal No.278 of 2015 was also not given to her. When she received notice of Second Appeal No.278 of 2015, her son took her to the office of the local advocate to file the cross appeal. Her son assured that he is doing all

the needful to file the cross appeal. Thereafter applicant did not pay his attention and failed to do the needful to file the cross appeal. She came to know in June, 2020 about the order dated 29.04.2019 when she inquired about it to her son. But she could not give satisfactory explanation as to why he did not file the cross appeal. She was kept in the dark. The applicant and her relatives contacted their counsel and then the counsel took some time to draft the matter and hence the delay of 1941 days has been caused in filing the appeal. Delay is not deliberately caused. It is lastly prayed for condonation of delay.

3. The respondents strongly opposed the application by filing their reply. All the material contentions raised in the application are denied by the respondents. It is lastly prayed to reject the application.

4. Heard both the counsels for the parties.

5. Perused the application and say.

6. The reasons as to why delay was caused are important and decisive. It is not denied that the applicant is old aged women of rural area. She was not properly informed and advised. The delay was not caused intentionally. While considering application under Section 5 of the Limitation Act, 1963 the Court has to take it liberal attitude.

7. The reasons stated in the application are found genuine and sufficient. Particularly, considering the fact that

rights of the parties are to be decided on merit, the application deserves to be allowed in the interest of justice. However, at the same time other side must be compensated by paying heavy costs.

8. Considering peculiar set of facts of this case, it would be proper to direct the applicant to pay costs of Rs.5,000/- to the contesting respondent Nos.4 to 7.

9. The application is **allowed** on the condition that applicant shall pay costs of Rs.5,000/- to the contesting respondent Nos.4 to 7 within **two weeks**. Subject to depositing of the costs of Rs.5,000/- the appeal is restored.

10. Civil application is **disposed of** accordingly.

(SANJAY A. DESHMUKH, J.)