



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

CIVIL APPLICATION (CAS) NO. 963 OF 2014 IN
RC NO. 147 OF 2017

Shri Laxman S/o. Pandurang Vaidya .VS. Motilal S/o. Kisan Tikam and others

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

Mr. S. P. Kshirsagar, Advocate for the appellant

Mr S. K. Gurupade, Adv. h/f. N. B. Bargat, Advocate for respondents

CORAM : G.A. SANAP, J.

DATE : JANUARY 18, 2024.

Heard.

2. This is an application made by the appellant/ applicant seeking condonation of 253 days delay caused in filing the appeal against the impugned judgment and order dated 19.08.2011 passed by the learned District Judge, Nagpur. Learned District Judge, Nagpur by the said judgment and order was pleased to dismiss the appeal and confirm the judgment and decree dated 24.04.2006 passed by the learned Civil Judge Junior Division, Ramtek.

3. The suit in question was filed seeking injunction restraining the defendants from causing obstruction in

the public way. The trial Court found that the respondents have right to use the public way and the obstruction caused by the defendants was illegal. This finding of fact recorded by the trial Court has been confirmed by the first appellate Court.

4. It is the case of the appellant that he is suffering from old age ailments. He could not contact his advocate. The appellant could not also get the information about the dismissal of the appeal by the appellate Court. He is the Karta of the joint family. The delay is not intentional. The appellant was prevented, by a sufficient cause, from filing the appeal within time. There is delay of 253 days in filing the appeal. It is stated that if the delay is not condoned then the appellant would suffer irreparable loss.

5. The respondents filed the reply and opposed the application. In sum and substance, it is contended that no case has been made out to condone the delay. It is further contended that the ground put-forth in the application can't be believed and accepted.

6. I have heard the learned Advocates for the parties. Perused the record and proceeding.

7. The second appeal is filed with a delay application challenging the concurrent findings of fact. However, this may not be the reason to take a particular view while deciding the application for condonation of delay. This issue needs to be addressed keeping in mind the facts stated in the application and more particularly the grounds put forth to make out a case for condonation of delay. There is delay of 253 days in filing the appeal. It is the paramount contention of the appellant that he is suffering from old age ailments and therefore, he could not file the appeal within time. It is contended by the respondents that there is no iota of material to substantiate this contention. It is contended that it is not the case of the appellant that throughout he was bed ridden and therefore, he could not contact his Advocate.

8. The appellant is resident of Ramtek. Ramtek is at the distance of 50 km. from Nagpur. The first appeal was decided by the learned District Judge, Nagpur. The reasons stated in the application for condonation of delay

must be believable and on the basis of the reasons, the Court must be satisfied that, indeed the party was prevented due to the said reasons from approaching the Court. The existence of reasons and invention of reasons to seek condonation of delay are two different aspects. If the Court comes to the conclusion that the reasons are nothing but the invention to seek the condonation of delay then the delay cannot be condoned. The concerned party cannot ask for condonation of delay as of right.

9. The applicant has stated in his application that he is the Karta of the family. There is no reason stated in the application as to why the remaining members of his family could not take steps to file the appeal. The applicant was required to explain this aspect. It is seen on perusal of the application that the grounds stated in the application are nothing but the figment of fertile imagination. In my view, on the basis of the averments, not being supported by any material, no case is made out for condonation of delay. Accordingly, the application stands **dismissed** and disposed of, accordingly.

(G. A. SANAP, J.)

Namrata