



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

CIVIL APPLICATION (CAS) No.941 of 2024
IN
SECOND APPEAL STAMP NO.16930 OF 2024

Bindeshwari Prasad Gupta
Vs.
Rupesh Balwant Wairagade

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

Court's or Judge's orders

Mr. P. G. Mehta, Counsel for the applicant.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 14/11/2024

1. By this application, the applicant is seeking condonation of delay.

2. Learned Counsel for the applicant submitted that the applicant has preferred the present Second Appeal challenging the judgment and order dated 15.03.2023 passed by the learned Principal District Judge, Chandrapur in Regular Civil Appeal No.148/2012, thereby confirming the judgment passed by the learned Civil Judge Senior Division in Special Civil Suit No.29/2009. However, delay of 405 days is caused in preferring the appeal. He submitted that in fact initially, the applicant has filed Second Appeal within limitation on 18.07.2023 by way of e-filing. E-filing No."EC-HCBM04-021412023" was allotted. There were some office objections and the applicant has to remove the said

office objections. However, subsequently, the portal for the online filing shown that the appeal filed by the present applicant was removed from the server and thereafter, the applicant approached the office and sought the instructions and information, in which the time was consumed, and therefore, delay is caused.

3. Learned Counsel for the applicant submitted that in fact the delay was not caused on account of the mistake on the part of the applicant, but it is office who has removed the file of the present applicant from the portal and therefore, the applicant was constrained to file the another appeal and therefore, the delay is caused. Thus, the delay is unintentional one. The applicant has *bona fide* reasons for the delay. In view of that, the delay be condoned.

4. After due service of the notice on the respondent, respondent failed to appear.

5. Perused the application and the contention mentioned in the application which is supported with the affidavit. Considering the reason mentioned in the application, which appears just and reasonable. It is well settled that while considering the delay application, the liberal approach is to be taken and the parties are to be allowed to cause their litigation on its own merits. After going through the reason mentioned in the application, admittedly, the satisfactory reason is mentioned by the applicant and

therefore, the delay caused deserves to be condoned.

Accordingly, I proceed to pass following order:

ORDER

- (i) Civil Application is allowed.
- (ii) Delay of 405 days is hereby condoned.
- (ii) Appeal be registered.

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On registration of the appeal, notice be issued to the respondent, returnable within four weeks.

(URMILA JOSHI-PHALKE, J.)