



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

SECOND APPEAL NO.498 OF 2019

[Lila Keshavrao Ingole ..Vs.. Devidas Govindrao Bakare and Anr.]

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

Court's or Judge's order

Mr S. A. Chaudhari, Advocate for Appellant.
Mr S. K. Bhoyar, Advocate for Respondent No.1 /Caveator.

CORAM : M. W. CHANDWANL, J.

DATE : 8th JULY, 2024.

. Heard.

2. The judgment and decree passed by the learned District Judge, Wardha in MJC No.68 of 2019 has been assailed in the present appeal.

3. It is not necessary to go into the matrix of the case in detail. Suffice to say that the appellant, who is original defendant in Special Civil Suit No.8 of 2013 filed by the respondent No.1, preferred an appeal against the decree passed by the learned Civil Judge Senior Division, Wardha. However, there was delay of 670 days in filing the appeal, therefore, MJC No.68 of 2019 came to be filed. The application for condonation of delay came to be rejected by the impugned judgment and decree dated 09.08.2019.

4. The following substantial question of law arises for consideration :

“In view of the cause shown in the application for condonation of delay in filing first appeal, whether rejection of the application for condonation of delay is

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just and proper ?”

5. Heard learned counsel for appellant as well as learned counsel for respondent No.1/Caveator.

6. The contention is that the appellant is a widow. The son of the appellant left the house without intimating her. Due to this incident, the appellant was under trauma for a considerable time. Therefore, she could not contact her Advocate and she could not contest the matter on merits.

7. Learned counsel appearing for respondent No.1 did not seriously object the application for condonation of delay rather, he submitted that the matter be decided on merits.

8. It appears that written statement has already been filed by the appellant before the Trial Court. However, the appellant neither cross-examined the respondent No.1 nor filed any affidavit of her evidence. This fact substantiates the contention raised by the appellant in the application for condonation of delay before the Appellate Court.

9. Perusal of impugned judgment shows that the Appellate Court has taken a very casual approach and rejected the application for condonation of delay on the ground that the appellant/original defendant had already filed written statement, particularly when the contention of the appellant was that all this occurred at later stage of the suit. Thus, the reason given for rejection of application is not proper. The Appellate Court was not justified in rejecting the application for condonation of delay. Therefore, the impugned judgment

and decree of the Appellate Court cannot sustain in the eyes of law, therefore, the same deserves to be set aside.

10. In view of the above discussion, the appeal succeeds, hence the following order.

i) The impugned judgment and decree dated 09.08.2019 passed by the learned District Judge, Wardha, is set aside.

ii) The delay of 670 days in filing the appeal is hereby condoned.

iii) The learned District Judge, Wardha, to hear and decide the appeal on merits according to law.

11. In the above said terms, the appeal is disposed of. The civil application(s), if any, also stand(s) disposed of.

JUDGE