



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

CIVIL APPLICATION (CAO) NO.739 OF 2024

IN

MCA ST. NO. 12419 OF 2024

IN

SECOND APPEAL NO. 37 OF 2016 (D)

KANTABAI WD/O MOHANLAL CHAUDHARI

Vrs.

KESARABAI MOHANLAL CHAUDHARI AND ANOTHER

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

Court's or Judge's Order

Shri S. G. Karmarkar, Advocate for applicant/appellant.
Shri Soumitra Paliwal, Advocate for respondent No.1.
Shri M. P. Kariya, Advocate for respondent No.2.

CORAM: SANJAY A. DESHMUKH, J.

DATE : 11/10/2024.

1. This is an application for condonation of delay of 920 days caused for filing restoration application.
2. Perused the application and reply filed by both the respondents separately.
3. Heard learned Advocates for both sides.
4. Learned advocate for the applicant pointed out the order of dismissal of the appeal passed by this Court dated 11/10/2019.
5. Learned advocate for the applicant submitted that compromise between the parties was going on. Therefore, applicant could not contact her advocate. Applicant is old aged lady. She took inspection of the record of the case. She found that her Second Appeal No.37/2016 is dismissed in default.

6. Learned advocae for the applicant submitted that the delay is not deliberately caused. Two substantial questions of law are formed by this Court. The lis between the parties must be decided on merit finally. It is, therefore, prayed to allow the application, in the interest of justice.

7. Shri Soumitra Paliwal, learned advocate for respondent No.1 strongly opposed the application. He pointed out the reply filed to this application. He submitted that there is no sufficient reason to condone the delay. The speaking order of this Court is very clear. He pointed out that the Court observed that even notice was served. However, the applicant did not remain present in the Court. Delay is not properly explained. He submitted that there is no sufficient reason to allow this application. It is lastly prayed to reject the application.

8. The learned advocate Shri Kariya for the respondent No.2 submitted that the applicant has not pleaded and established sufficient reason for condoning the delay. He submitted to reject the application.

9. On perusal of the application as well as order passed by this Court, it reveals that the applicant was served with the notice. She remained absent. Therefore, the appeal was dismissed. Notice was not issued to the appellant by the Court.

10. Generally, such applications are to be decided liberally. However, the decisives are the facts of the case. For condonation of delay, there must be sufficient reason

to condone the delay. There is delay of 920 days i.e. more than two and half years delay.

11. It would be proper to rely upon the following authorities of Hon'ble Supreme Court :-

i] **Collector, Land Acquisition Anantnag and another ..vs.. Mst. Katiji and others**, reported in **AIR 1987 SC 1353** as followed :

“3...

1. Ordinarily a litigant does not stand to benefit by lodging an appeal late.

2. Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this when delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties.

3. "Every day's delay must be explained" does not mean that a pedantic approach should be made. Why not every hour's delay, every second's delay? The doctrine must be applied in a rational common sense pragmatic manner.

4. When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay.

5. There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala fides. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk.

6. It must be grasped that judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so.

Making a justice-oriented approach from this perspective, there was sufficient cause for condoning the delay in the institution of the appeal. The fact that it was the 'State' which was seeking condonation and not a private party was altogether irrelevant. The doctrine of equality before law demands that all litigants, including the State as a

litigant, are accorded the same treatment and the law is administered in an even handed manner. There is no warrant for according a step motherly treatment when the 'State' is the applicant praying for condonation of delay. In fact experience shows that on account of an impersonal machinery (no one in charge of the matter is directly hit or hurt by the judgment sought to be subjected to appeal) and the inherited bureaucratic methodology imbued with the note-making, file pushing, and passing-on-the-buck ethos, delay on its part is less difficult to understand though more difficult to approve. In any event, the State which represents the collective cause of the community, does not deserve a litigant non grata status. The Courts therefore have to be informed with the spirit and philosophy of the provision in the course of the interpretation of the expression "sufficient cause". So also the same approach has to be evidenced in its application to matters at hand with the end in view to do even-handed justice on merits in preference to the approach which scuttles a decision on merits."

ii] **Sheo Raj Singh (Deceased) through legal representatives and others ..vs.. Union of India and another**, reported in (2023) 10 SCC 531 as followed :

"Held, expression "sufficient cause" is adequately elastic to enable the courts to apply the law in a meaningful manner which subserves the ends of justice – Expression "sufficient cause" should, therefore, be considered with pragmatism in justice-oriented approach rather than the technical detection of sufficient cause for explaining every day's delay."

12. Considering the reasons stated in the application, particularly, the order passed by this Court while dismissing the appeal, it appears that notice was received by the applicant which was sent to her by her advocate. But no notice was sent to her by this Court. The reply filed by both sides and from other documents, it appears that talk for compromise was going on. These are sufficient reasons. Further, civil lis of immovable property

must be decided on merit finally. However, the delay is not deliberately caused.

13. Considering the fact that this lis to be decided on merit finally and in view of ratio of Judgments of the Hon'ble Supreme Court cited supra, such application shall be decided with liberal approach. For that, the other side can be compensated in terms of money by awarding costs. Therefore, costs of Rs.10,000/- must be awarded. However, learned advocate for the respondents submitted that said costs shall be paid to the High Court Bar Association Library, Nagpur (HCBA, Nagpur) and Vidarbha Lady Lawyers' Association, Nagpur.

14. The application deserves to be allowed in the interest of justice to decide lis on merit on certain conditions.

15. Application for condonation of delay is allowed. Delay of 920 days caused for filing the application for restoration of appeal is condoned subject to deposit of costs of Rs.10,000/-.

16. The applicant is directed to deposit costs of Rs.5,000/- in the office of High Court Bar Association Library, Nagpur (HCBA, Nagpur) and costs of Rs.5,000/- in the office of Vidarbha Lady Lawyers' Association, Nagpur. If it is not deposited, the application shall be deemed to be dismissed without further order.

17. It is further clarified that the application is allowed on the condition that the appeal shall be heard

finally within a month. For that purpose, the amount of costs shall be deposited on or before 18/10/2024.

18. The application is allowed and disposed of.

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19. This is an application for restoration of second appeal.

20. For the reasons stated in the application, the application is allowed and disposed of.

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21. Issue notice to the respondents.

22. Shri Soumitra Paliwal, learned advocate waives service of notice for respondent No.1.

23. Shri M.P. Kariya, learned advocate waives service of notice for respondent No.2.

24. Shri Paliwal, learned advocate for respondent No.1 orally submitted that subsequent purchasers of the suit property are as follows :-

i] Nikki Laxman Bisne, R/o Devsarra, Post Bapera, Tumsar, Bhandara.

ii] Aman Nareshkumar Agrawal, R/o Post Bapera, Tumsar, Bhandara - 441915.

iii] Pramod Dwarkadas Chandak, Ward No.03, Opp. Panchayat Bhawan, Post Khairlanji, Mowad, Balaghat, M.P. 481337.

25. Shri Soumitra Paliwal, learned advocate for respondent No.1 is directed to file their applications accordingly with the sale deed of suit property.
26. Stand over to 18/10/2024.

[SANJAY A. DESHMUKH, J.]

Choulwar