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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**CIVIL APPLICATION NO. 14987 OF 2023
IN
SECOND APPEAL (STAMP) NO. 27724 OF 2023**

Rupali Machindra Dalvi and another.

Versus

Machindra Bansidhar Dalvi.

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Mr. G.S. Shete, Advocate for applicants.

Mr. S.S. Shaikh, Advocate for respondent.

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CORAM : S.G. CHAPALGAONKAR, J.

DATE : 14th FEBRUARY, 2025.

P.C. :-

1. The applicants seek to condone delay of 1223 days caused in filing the second appeal against the order dated 23.1.2020 passed by Ad-hoc District Judge-2, Nanded in R.C.A. No. 82 of 2013.

2. The applicants are original plaintiff in R.C.S. No. 204 of 2012. Plaintiffs raised claim for grant of maintenance against defendant. The trial court partly decreed the suit, however, plaintiffs filed R.C.A. No. 82 of 2013 before the District Judge, Nanded for further enhancement in maintenance amount. The learned District Judge partly allowed appeal and enhanced monthly maintenance by granting additional maintenance amount by Rs. 2,500/- and 2,000/- for plaintiff Nos. 1 and 2, respectively.

3. Plaintiffs filed present second appeal alongwith this application to condone the delay of 1223 days. Plaintiff No.1 explained delay, giving the reason that although judgment was passed on 23.1.2020, she was not informed by their advocate. Meantime, due to COVID pandemic situation, plaintiff was not in contact with the advocate. Further, by order passed by the Supreme Court, the limitation period from 15.3.2020 to 28.2.2022 has been freezed. In June, 2023, she came to know about the order passed by the appellate court. Thereafter, as per the advice, filed present application.

4. The reason as stated in the application are controverted by respondent/defendant by filing affidavit in reply. It is contention of respondent that applicant is making out absolutely false reason. She was well aware about the order passed by the appellate court. He states that on 2.7.2022 the applicant has filed Regular Darkhast No. 13 of 2022. Thereafter, on 2.9.2023 present application is filed. He deposited amount @ Rs. 11,000/- p.m. as directed by the appellate court. The receipts evidencing payment are also filed alongwith reply.

5. Before venturing into the controversy, it would be appropriate to refer to the observations of the Supreme Court of India in the recent judgment in case of ***Pathapati Subba Reddy (Died) by L.Rs. & others vs. Special Deputy Collector(LA) 2024 (5) Mh.L.J. 100*** which read thus :-

“26. On a harmonious consideration of the provisions of the law, as aforesaid, and the law laid down by this Court, it is evident that:

(i) Law of limitation is based upon public policy that there should be an end to litigation by forfeiting the right to remedy rather than the right itself;

(ii) A right or the remedy that has not been exercised or availed of for a long time must come to an end or cease to exist after a fixed period of time;

(iii) The provisions of the *Limitation Act* have to be construed differently, such as *Section 3* has to be construed in a strict sense whereas *Section 5* has to be construed liberally;

(iv) In order to advance substantial justice, though liberal approach, justice-oriented approach or cause of substantial justice may be kept in mind but the same cannot be used to defeat the substantial law of limitation contained in *Section 3* of the *Limitation Act*;

(v) Courts are empowered to exercise discretion to condone the delay if sufficient cause had been explained, but that exercise of power is discretionary in nature and may not be exercised even if sufficient cause is established for various factors such as, where there is inordinate delay, negligence and want of due diligence;

(vi) Merely some persons obtained relief in similar matter, it does not mean that others are also entitled to the same benefit if the court is not satisfied with the cause shown for the delay in filing the appeal;

(vii) Merits of the case are not required to be considered in condoning the delay; and

(viii) Delay condonation application has to be decided on the parameters laid down for condoning the delay and condoning the delay for the reason that the conditions have been imposed, tantamounts to disregarding the statutory provision.”

6. Aforesaid exposition of law depicts that courts are empowered to exercise discretion to condone the delay if sufficient cause has been made out. The merits of the case are not to be considered in condoning delay. Similarly, in *Basavraj Vs. Special Land Acquisition Officer (2013) 14 SCC 81*, it is observed that discretion to condone delay has to be exercised judiciously based upon facts and circumstances of

each case. The expression “sufficient cause” as occurring in Section 5 of the Limitation Act, cannot be liberally interpreted if negligence, inaction and lack of bonafides is writ large. It is also observed that even though limitation may harshly affect rights of parties but it has to be applied with all its rigor. What is prescribed under the statute is that the courts have no choice but to apply the law as it stands and they have no power to condone delay on equitable grounds.

7. In the light of exposition of law, as stated above, if the reason as given by applicant is considered, it can be observed that she has put forth palpably false reason that she had no knowledge of decision rendered by the District Court. Respondent placed on record copy of the R.D. filed by applicant, which was presented on 2.2.2022 seeking recovery of Rs. 11,22,440/- on the basis of decree passed by appellate court. Further, from 9.4.2022 the respondent has transferred consistently amount of Rs. 11,000/- p.m. to the applicant towards maintenance amount as per order passed by Appellate Court.

8. In the light of this factual aspect, the statement made by applicant that she was not aware about the decision of the appellate court, is completely collapsed. She was not only aware about the decision but sought execution thereof before the Executing Court. Respondent has consistently paid her amount in pursuance to appellate decree. Therefore, presentation of Second Appeal on 28.8.2023 cannot be countenanced. The explanation sought to be tendered sans bonafides. True, that considering the COVID period, the delay in filing appeal will have to be counted after 2.10.2021, as per the order of the Supreme Court in *Suo Motu* Petition No. 3 of 2020, dated 10th January,

2022. However, there is no explanation for the further period. In that view of the matter, application stands rejected. Consequently, second appeal stands disposed of.

[S.G. CHAPALGAONKAR, J]

grt/-