

MJ Jadhav

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL APPLICATION NO. 1098 OF 2018
WITH
CIVIL APPLICATION NO. 1099 OF 2018
WITH
SECOND APPEAL (ST) NO. 13895 OF 2018**

Anil Marutrao Nigade

... Applicant

vs.

Shamrao Dadu Nigade and Ors.

... Respondents

Mr. Mahesh Subramaniam i/b Sachin Dhakephalkar for the Applicants.

Mr. Niranjan Bhavake i/b Bhavake and Associates for the Respondents.

CORAM : GAURI GODSE, J.

DATED : 3rd MARCH 2025

ORDER :-

1. Heard learned counsels for the parties.
2. This application is for condonation of delay of 1 year and 26 days in filing the second appeal. The application is opposed by the respondents on the ground that the respondents were represented through advocate and were aware about the proceeding.
3. Learned counsel for the respondents points out the pursis at Exhibit 31 filed in the first appeal by the advocate for the applicant thereby recording that he had no instructions from the appellant and

therefore, it was not possible for the advocate to prosecute the appeal any further. He, therefore, submits that the appellant never bothered to appear in the appeal and prosecute his appeal in the District Court. He, thus, submits that the reasons about illness and being unaware about the impugned judgment is not believable. He, therefore, submits that false grounds have been raised for condoning the delay of more than a year.

4. Learned counsel for the appellant submits that his advocate had never taken discharge from the appeal. He submits that paragraph no.8 of the impugned judgment records that the respondent i.e. the present appellant or his advocate was not heard while deciding the appeal. He submits that though, the title of the judgment records in the appearance column as present in person, the appellant i.e. respondent in the first appeal was never present before the Court. He submits that the entries in the roznama and reference in paragraph no.8 of the impugned judgment indicates that inadvertently the appearance of the appellant is recorded in the appearance column in the impugned judgment.

5. Learned counsel for the appellant relies upon an additional affidavit dated 14th February 2025, filed by the appellant reiterating that the appellant was never present before the District Court and

the entry in the appearance column in the impugned judgment is due to some typographical error. Learned counsel for the appellant submits that the appellant was unwell and therefore, he was unable to take steps within time. To support his submissions, the appellant has relied upon the copies of the medical papers annexed to the application. Though, the reasons in the application are vehemently opposed by the respondents, I find substance in the arguments raised on behalf of the appellant regarding the impugned order passed without hearing the appellant or his advocate. The pursis filed by the appellant's advocate indicates that the appellant's advocate did not argue the appeal. I see no reason to disbelieve the medical papers relied upon by the appellant to support his grounds of delay as he was unwell.

6. In the facts and circumstances of the case, delay is condoned and the application is allowed in terms of prayer clause (a).

7. Learned counsel for the appellant seeks time to argue the second appeal on merits.

8. Office is directed to list the second appeal on 21st April 2025.

9. To listed high on board under the caption 'for admission'.

(GAURI GODSE, J.)