



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

SECOND APPEAL NO. 198/2023

Raghunath Dattatraya Gharpure,
aged about 75 yrs, Occ. Cultivation,
R/o. C/o. Shri Shrikant D. Gharpure,
R/o. Dhokdi, Post Kanholibara,
Tah. Hingna, Dist. Nagpur.
(On R.A.)

...APPELLANT
Original plaintiff

VERSUS

1. The Chief Engineer,
Irrigation Department, Sinchan
Bhavan, Civil Lines,
Nagpur-440001
(On R.A.)
2. The Superintending Engineer and
Administrator, Command Area
Development Authority, Wainganga
Nagar, Nagpur (On R.A.)
3. The Executive Engineer,
Minor Irrigation Division,
Wainganga Nagar,
Nagpur (On R.A.)

RESPONDENTS
(Original defendants)

Mrs. Smita. P. Deshpande, Advocate for appellant.
Mr. A.M. Kukday, Advocate for respondents.

CORAM : ROHIT W. JOSHI, J.
DATED : 06/05/2025.

ORAL JUDGMENT :

Heard.

2. Special Civil Suit No. 757/2008 filed by the present appellant came to be dismissed vide judgment and decree dated 03.01.2017, against which the appellant preferred first appeal, in which there was a delay of around 395 days. The appellant, therefore filed separate Civil Miscellaneous Application No. 141/2018 seeking condonation of delay. Learned counsel for appellant stated that after receiving knowledge about dismissal of suit, application for certified copy was made and initially as was advised by the Advocate an application for setting aside the decree was filed. However, subsequently on legal advise, the present appellant filed first appeal. In such a circumstances, there is delay of 395 days in filing of the appeal.

3. The undisputed facts disclose that the appellant on getting knowledge about dismissal of the suit, had contacted the Advocate within a reasonable time for taking appropriate steps and had filed

application for setting aside the decree as per legal advise. This shows that the appellant was diligent in taking further steps in the matter. The said fact is also apparent from the impugned judgment and order passed by learned First Appellate Court.

4. Learned counsel for respondents strongly opposes the appeal. He points out that since the suit was decided on merits and the appellant was admittedly aware about the adverse decree passed against him, he ought to have filed appeal promptly. He contends that delay is inordinate and learned First Appellate Court has rightly rejected the application for condonation of delay.

5. It is obvious that steps in legal proceedings are taken by litigants as per legal advise received by them. However, for the reasons mentioned above, delay of 395 days has occurred in filing First Appeal. The delay is clearly on account of legal advise received by the appellant. It appears that learned First Appellate Court has adopted a very rigid and technical approach in passing the impugned judgment and order rejecting the application for condonation of delay. Having regard to the explanation offered, in my considered opinion, the substantial question of law framed vide order dated 24.04.2025 are

required to be answered in favour of the appellant. However, having regard to the delay, it will be necessary to impose cost of Rs. 5000/-.

6. The second appeal is thus, allowed in the following terms:-

I. Judgement and order dated 05.07.2019 passed by learned Adhock District Judge-12, Nagpur in Misc. Civil Application No. 141/2018 is quashed and set aside.

II. Misc. Civil Application No. 141/2018 decided by learned Adhock District Judge-12, Nagpur is allowed by condoning the delay caused in filing appeal, subject to cost of Rs.5000/- payable to the Government Pleader Library, High Court, Nagpur within a period of four weeks from today.

(ROHIT W. JOSHI, J)