



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

**SECOND APPEAL NO. 23/2025**

1. Shri Pandurang Panditrao Bagade,  
aged about 58 yrs., Occ. Retired,  
R/o. House of Mr. Arun Nimbhorkar  
behind Aashirwad, Mangal Karyalay,  
Bhatkuli, Tq. Bhatkuli, Dist. Amravati.
2. Sau. Alolika Shrikrushna Dhavali,  
aged about 70 yrs., Occ. Cultivator,  
R/o. Hingna (Bujruk), Dhhahihanda,  
Ward No.1, Tq. and Dist. Amravati.

**...APPELLANTS**

Original applicants.  
(On R.A.)

**VERSUS**

1. Anil Sambhaji Gote,  
Aged about 50 yrs., Occ. Agriculture,  
R/o. Professor Colony, Tq. & Dist.  
Amravati.
2. Sau. Rajani Ranjit Chavan,  
aged 56 yrs., Occ. Household,  
R/o. Sabnis Plot, Amravati.

**RESPONDENTS**

Original non-applicants  
(On R.A.)

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Mr. S.P. Bhandarkar, Advocate with Mr. A. Khadse, Advocate for  
appellants.  
Mr. A.M. Sudame, Advocate for respondent No.1.  
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CORAM : ROHIT W. JOSHI, J.  
DATED : 06/05/2025.

ORAL JUDGMENT :

Heard.

2. Judgment and order dated 05.12.2024 passed by learned District Judge-1, Amravati rejecting application for condonation of delay in filing first appeal registered as Civil Miscellaneous Application No. 24/2024 is impugned in the present second appeal. The appellants have suffered a decree for specific performance of contract vide judgment and decree dated 05.11.2019 passed by the Court of learned Extra Joint Civil Judge, (Senior Division), Amravati in Special Civil Suit No. 116/2018. The appellant challenged the same by preferring first appeal. However since there was a delay in filing first appeal, an application for condonation of delay was filed. The entire contents of said application are reproduced herein below:-

*“1. That appellant is suffering from Sugar since last 5 years and in respect of that he has taking treatment Dr. Ashelesh Choudhari suffering from Acute PTVD.*

*2. That due to the doctor advice given to the appellant and as such appellant is bed ridden from 01.03.2022 to 15.12.2023 therefore unable to file the appeal with in stipulated period.*

*Hence this application.*

*Prayer:- It is most humbly pray that, Hon'ble Court may be please to condon the delay of 780 days in the interest of justice.*

*1. Grant any other relief which deem fit just and proper in the interest of Justice."*

3. The application was strongly opposed by filing reply. Learned counsel for respondents pointed that as against 780 days delay claim to have occurred by the appellant. The delay in-fact was of more than 1500 days. The appellants have led evidence in the matter before learned First Appellate Court.

4. Perusal of the application indicates that the applicant has stated that he was a patient of Diabetes and was suffering from Acute PTVD for a period of around five years prior to date of filing application. He has stated that he was bed-ridden from 01.03.2022 to 15.12.2023. However, during the course of his cross-examination, he has admitted that during this period he has appeared in revenue litigation between the parties relating to the same transaction. The statement made in the application for condonation of delay about the medical condition of the appellant between 01.03.2022 to 15.12.2023 is clearly incorrect. Learned

First Appellate Court has rightly taken into consideration the said admission to hold that the appellant has not come up with clean hands and has attempted to mislead the Court by making incorrect statement. Apart from this, learned First Appellate Court has also considered that except for the medical certificate, the appellant did not file any documentary evidence to substantiate the averments with respect to alleged ailment. It is pertinent to mention that according to learned counsel for appellant, he could not file appeal within limitation since he was suffering from ailment mentioned in the application for a period of around five years. However, regard to the period of delay, filing of medical certificate by itself will not suffice. The appellant should have filed other documents such as medical prescriptions, investigation papers, documents showing payments made towards treatment etc.

5. Objection raised by learned counsel for respondents that delay is more than 1500 days is also correct inasmuch as the decree passed by learned Trial Court is four months before of Covid-19 lock-down and the period of limitation was extended by the Hon'ble Supreme Court upto 30.06.2022 and the appeal is filed

in December 2023 and is registered in January 2024. Having regard to the aforesaid, it is obvious that learned First Appellate Court has not committed any error in rejecting application for condonation of delay. The discretion exercised by learned First Appellate Court cannot be interfered with in exercise of jurisdiction under Section 100 of the Code of Civil Procedure. In that view of the matter, second appeal does not give rise any substantial question of law and is dismissed accordingly.

**(ROHIT W. JOSHI, J)**

*Gohane*