



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

SECOND APPEAL NO.175/2022

Kanhaiyalal Jodhalal Goyal

...Versus...

Roshanbee w/o Abdul Gani and another

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

Court's or Judge's orders

Mr. S.M. Vaishnav, Advocate for appellant
Mr. C.G. Barapatre, Advocate for respondents

CORAM : ROHIT W. JOSHI, J.

DATE : 08/12/2025

1. Application for condonation of delay around 12 years in filing Regular Civil Appeal came to be rejected by the learned first Appellate Court vide order dated 04/08/2021. This order is subject matter of challenge in the present second appeal.

2. Vide order dated 02/05/2022, following substantial question of law was framed while issuing notice in the appeal :-

“Whether the appellant had shown sufficient cause for condonation of delay in filing the appeal before the First Appellate Court ?”

3. Perusal of application for condonation of delay filed by the appellant before the learned first Appellate Court will demonstrate that the civil suit was decided on 31/07/2007. The appellant states that although the civil suit was decided, learned Advocate representing him before the

Trial Court gave understanding that the suit was pending and it is only in the 2015 that he was informed that the suit was already decided. He has then stated that he had family relations with the Advocate, appearing before the learned Trial Court, who had informed that case papers were handed over to an Advocate for filing appeal before this Court and accordingly, he believed that the appeal is already filed and is pending. He states that in the year 2019 on his instructions, the learned Advocate representing him before the learned Trial Court, gave contact number of the Advocate to whom papers were allegedly handed over for filing of appeal before this Court and that on enquiry from the learned Advocate to whom papers were allegedly handed over for filing appeal, he was informed that the appeal was in fact required to be filed before the learned District Court. It is also stated in the application that the appellant had suffered some injury in the road accident on 14/10/2017 and was required to take treatment for a considerable period at different hospitals.

4. The learned Appellate Court has rejected the application for condonation of delay finding that there is no plausible explanation for the delay between the year 2007 to 2015 and further from 2015 onwards as well. The learned Appellate Court has found that it is inconsiderable that a litigant would not make proper enquiries and would languish under belief that the litigation is pending for an inordinate long period of 11 years.

5. The learned Advocate for the appellant places reliance on the judgment of the Hon'ble Supreme Court in the matter of *Rafiq and another Vs. Munshilal and another*,

reported in *(1981) 2 SCC 788* and the judgment of this Court in the matter of *Ashok Ravji Vadodriya Vs. Municipal Corporation of Greater Bombay*, reported in *2003 (3) Mh.L.J. 1003*. Both these judgments lay down that in a proceeding before the Appellate Court a litigant is not supposed to attend the proceeding on each and every date and therefore in cases where a litigant seeks condonation of delay on the ground that the outcome of the appeal was not informed to him by the learned Advocate, the said explanation should normally be believed.

6. With respect, the ratio of the said cases cannot apply to the facts of the present case.

At the outset, the delay from 2007 to 2015 is sought to be explained, stating that the appellant was under belief that the civil suit was pending. What applies to an Appeal obviously does not apply to a civil suit. The proceedings in a civil suit are dynamic and fluid. Developments take place day-to-day as the suit travels from one stage to another till its culmination. It is inconceivable that for a period of around 8 years, the appellant was under belief that the civil suit was pending.

7. As regards the contention that the appellant was under impression that the appeal was filed before this Court, as allegedly represented by his Advocate appearing before the learned Trial Court, it is seen that there is no statement in the application for condonation of delay that the appellant had paid fees of the learned Advocate or that he had made a provision for payment of court fees in the appeal.

8. The medical situation, even going by the statement made in the application, was prevailing only for a short period of time from 2017 to 2018. Although the names of hospitals are mentioned, the period of hospitalization is also not mentioned.

9. For the reasons recorded above, this Court sees no reason to interfere with a well reasoned order, passed by the learned first Appellate Court, while refusing to exercise discretion in favour of the appellant in order to condone inordinate delay of around 12 years in filing first appeal. The substantial question of law framed vide order dated 02/05/2022 is, therefore, answered against the appellant and the second appeal is dismissed accordingly with no order as to costs.

(ROHIT W. JOSHI, J.)