



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

Civil Application [CAS] No.141 of 2024
in
Second Appeal St. No.3054 of 2024

Smt. Meena w/o Shankar Khapekar

vs.

Smt. Mithil s/o Dhanraj Dobarkar

*Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.*

Court's or Judge's Orders

Mr. A.B. Moon, Advocate for the Applicant/Appellant.
Mr. A.A. Bansod, Advocate for the Non-Applicant/Respondent.

CORAM : **M.W. CHANDWANI, J.**
DATE : **4th MARCH, 2025.**

Heard.

02. By the present application, the applicant is seeking condonation of delay of 553 days in filing the second appeal.

03. The contention is that after passing of the order by the learned Adhoc District Judge, Nagpur, instead of filing the appeal, the applicant filed Writ Petition No.1536/2020 which came to be withdrawn on 03/07/2023 with liberty to file a second appeal due to which, delay was caused in preferring the second appeal and therefore, the present application for condonation of delay came to be filed.

04. The application is objected on the ground that even after withdrawal of the writ petition, there is a delay of about three months in filing the application. According to him, there is no sufficient cause to condone the delay. To buttress his submission, the learned Counsel appearing for the respondent seeks to rely on the following judgments :

- ✓ **Esha Bhattacharjee vs. Managing Committee of Raghunathpur Nafar Academy and others – (2013) 12 SCC 649.** - The Supreme Court held that when there is an inordinate delay, doctrine of prejudice is attracted and strict approach is required. If there is a delay of short duration i.e. of three days, then there is no question of prejudice and liberal approach is to be taken.
- ✓ **Kanta alias Shanti w/o Subhash Karkale vs. Manjulabai alias Kholki w/o Haribhau Tarare and another – 2020(1) Mh.L.J. 918.** This Court has observed that if the litigant wishes to make allegations against the Advocate, the litigant should have the courage to join the Advocate as a party.
- **Rajneesh Kumar & Anr. vs. Ved Prakash 2024 INSC 891** – The Supreme Court has observed that just because the Advocate was careless or negligent, it cannot be a ground to condone long and inordinate delay as the litigant owes a duty to be vigilant of his own rights.

05. However, this is not a case of inordinate delay. The applicant was pursuing the remedy before the wrong forum under the *bona fide* impression that too suggested by the Advocate. Filing of writ petition is a matter of record and therefore, it cannot be said that blaming the Advocate is unwarranted.

06. That apart, nothing has been brought on record to show that the delay is not a *bona fide* one. Hence, the delay caused in preferring the second appeal is condoned. The appeal be registered accordingly.

07. The application is allowed subject to payment of costs of Rs.2,000/- (Rupees Two Thousand Only) payable to the High Court Legal Services Sub-Committee, Nagpur.

JUDGE