



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

SECOND APPEAL NO.219 OF 2025

Gajanan Pandurang Paturkar .Vs. Narendra Mahadev Roge

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

Court's or Judge's Order

Mr. A.A. Dhawas, Advocate for appellant.
Mr. V.M. Vishwarupe, Advocate for respondent.

CORAM : ROHIT W. JOSHI, J.
DATE : 04/12/2025

1. The present second appeal takes exception to the order below Exh.1 dated 11.12.2024, passed by the learned Principal District Judge, Chandrapur, in Civil M.A. No.97 of 2024, whereby the learned Court has rejected the application for condonation of delay in filing first appeal. Notice was issued vide order dated 06.08.2025, on the following substantial question of law :-

“Whether the learned First Appellate Court was right in not considering the ground of delay in preferring the appeal mentioned in para Nos.2 and 3 of the condonation of delay application ?”

2. The learned Principal District Judge has observed that the applicant had appeared before the learned Executing Court and despite appearance before the learned Executing Court, the appeal was filed after a period of around 10 months therefrom. Based on this observation, the application for condonation of delay is rejected.

3. The learned Advocate for the appellant however states that the suit property is a joint property owned by appellant and his wife. He contends that the appellant has a good case on merits. As regards the delay, the learned Advocate points out from the application that it was specifically contended that the appellant was not served with the suit summons issued by the learned trial Court. It is also stated that the appellant is a poor and illiterate person. The learned Advocate also contends that an opportunity of leading evidence was not granted by the learned First Appellate Court before deciding the application for condonation of delay, resulting prejudice to the appellant.

4. The learned Advocate for the respondent strongly opposes the appeal, pointing out that no effective steps were taken to file the appeal, despite being served with notice in the executing proceedings.

5. Having regard to the contention that the appellant is an illiterate person with limited resources and that his agricultural land is at stake, in the considered opinion of this Court, the learned First Appellate Court ought to have taken a liberal view in condoning the delay.

6. However, it is also necessary to secure the amount that the respondent/plaintiff has paid to the appellant/defendant as per the agreement in question. As per the agreement, an amount of Rs.2,00,000/- was paid by the respondent/plaintiff to the appellant/defendant on the

date of execution of agreement. Although this Court is not deciding as to whether the amount is paid or not, in order to secure the ends of justice, it will be appropriate that the appellant is directed to deposit the said amount with the learned First Appellate Court on or before **02.01.2026** since payment of the said amount is reflected in the agreement. Subject to such deposit, the application for condonation of delay being Civil M.A. No.97 of 2024 shall stand allowed. In the event, the amount is not deposited on or before the said date, the Civil M.A. No.97 of 2024 shall stand rejected without further reference to the Court.

(ROHIT W. JOSHI, J.)

C.L. Dhakate