



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

SECOND APPEAL NO.431 OF 2023

APPELLANT :- 1) Shri Sanjeevkumar Prasad
Proprietor Saraswati Builder.

2) Saraswati Builders through prop.
Sanjeevkumar Prasad Aged about; 51
years Occ: Business
Both R/o Saraswati Apartment plot No.3,
Near Shop of Country liquor, near
Wanjari Nagar Nagpur office Address;
plot no.192 Ring road Quarter no 9/9
H.B. Colony, Near M.S.E.B. office
Tukdoji Chowk Nagpur
(Sanjaykumar Nandkeshwar Prasad, Aged
about 48 Occu; private R/o plot no.3, 4,
5, 6, Beghar mitra society Shatabdi Nagar,
near Ring road Tahsil Nagpur (city)
Nagpur 440027

..VERSUS..

RESPONDENTS :- 1) Tarabai Wd/o Munnalal Hasore
(Hasoriya) (Deceased) though her legal
heirs

1A) Shri Sham Mohanlal Hasore (Hasoriya)
Aged about 49 years, Occ; Private

2) Shri Mohanlal S/o Munnalal Hasore
(Hasoriya), Aged about:: 83 Years, Occ;
Private

3) Shri Dilip Mohanlal Hasore (Hosoriya)
Aged about 55 Years, occ: Private
All R/o Teen Khamba Chowk Hanuman

Mandir Near Teli Samaj Bhawan, Timki
Tq and Dist. Nagpur Pin 440018.

Mr. Rajesh Nagpure, Advocate for Appellants.
Mr. S.S. Sitani, Advocate for Respondent Nos.1 (A), 2 and 3.

CORAM : ROHIT W. JOSHI, J.

DATE : 12/12/2025

ORAL JUDGMENT :

1. Heard finally with consent of learned counsel for the respective parties.

2. The present appeal takes exception to the order dated 29.11.2022, passed by the learned Special Judge, Special Court for differently abled persons, Senior Citizens and Marginalized Section of Society, Nagpur, in Miscellaneous Civil Application No.15 of 2021, whereby the application for condonation of delay in filing first appeal came to be rejected.

3. A substantial question of law came to be framed in the Second Appeal vide order dated 01.03.2024, which reads as under:-

“Whether the discretion exercised by the Court rejecting the delay application is proper?”

4. The learned Advocate for the appellants states that the learned First Appellate Court has committed a serious error of

jurisdiction in rejecting the application for condonation of delay without affording opportunity of leading evidence to the appellants. He contends that in view of Section 141 of the Code of Civil Procedure, 1908, the procedure prescribed for adjudication of a suit is also applicable to miscellaneous proceedings to be adjudicated under the CPC. The learned Advocate contends that while adjudicating on disputed questions of fact, it is essential for a Court to record oral evidence and afford parties an opportunity to lead evidence. Accordingly, he contends that unless a party makes a positive statement refusing to lead evidence, it is the duty of the Court to post the matter for recording of oral evidence. The learned Advocate states that since the learned First Appellate Court did not give opportunity to lead oral evidence, the impugned order passed by the learned First Appellate Court rejecting the application for condonation of delay is not sustainable. The learned Advocate further states that the appellant No.1 who is sole proprietor of appellant No.2 was not in town when the decree in the civil suit was passed against them. He states that the appellant No.1 was residing at Ranchi at the relevant time to look after his aged parents and therefore could not file the appeal within the prescribed period of limitation. Thus, according to the learned Advocate for the

appellants sufficient grounds for condonation of delay of around 374 days caused in filing of the first appeal was made out.

5. The learned Advocate further contends that the learned First Appellate Court has not followed the settled legal principle that the application for condonation of delay must normally be considered liberally with a view to decide cases on merits rather than dismissing the same on the ground of limitation. He has placed reliance on judgments of this Court in the matters of *Holya Lasha Mahale ..vs.. Raghunath Holya Mahale*¹, *Chandrakant Somnath Melge ..vs.. Balasaheb Somnath Melge*², *Devidas Ganpati Kale died LRs. Bhagwan Devidas Kale ..vs.. Munirbi Mahebuk Karanje*, dated 08.08.2023 passed in Second appeal No.24 of 2023 (Aurangabad Bench), *Madhumati Suresh Raut ..vs.. Namdeo Tukaram Yadav since deceased through LRs* (Bombay High Court), dated 05.12.2005 in Writ Petition No.182 of 1993 and *Smt. Sudha Devi ..vs.. M.P. Narayanan*³.

6. I have perused the application for condonation of delay filed by the appellants. It is stated in paragraph-3 of the application that the suit was prosecuted diligently by the appellants and their advocate. In paragraph-4 of the application, the appellants have

1 2006(5) MhLJ 80
2 2017(2) ALL MR 624
3 1988 (3) SCC 366

stated that from the year 2018 onward, the parents who are residents of Ranchi in the State of Jharkhand, were not keeping well and therefore, the appellant had gone to Ranchi to look after them. It is stated that the learned Advocate representing the appellants used to file applications before the learned trial Court seeking adjournment on medical ground, however the said applications were erroneously rejected by the learned trial Court and accordingly, the suit proceeded without participation of the appellants and judgment and decree dated 13.12.2018 came to be passed against them.

7. It is further stated in paragraph-5 that the limitation for filing appeal expired after a period of one month from 13.12.2018. The appellants have stated that the appellant No.1 returned to Nagpur on 10.03.2020, however, shortly thereafter, Covid-19 lockdown was imposed, as a consequence of which, the appeal could not be filed within the prescribed period of limitation. The appeal, along with an application for condonation of delay, was filed on 01.01.2021.

8. Perusal of the application will demonstrate that the appellants have not stated that they were not aware about the judgment and decree dated 13.12.2018 passed against them. The application is completely silent as regards the reasons for which the

appeal could not be filed within the prescribed period of limitation, despite such knowledge. It is merely stated that the appellant No.1 returned to Nagpur on 10.03.2020. The application does not explain as to why the appellants could not file the appeal while the appellant No.1 was allegedly stationed at Ranchi. It goes without saying that the physical presence of the appellant No.1 at Nagpur was not necessary for the purpose of filing of the appeal. It must also be stated that although the application avers that the parents of the appellant were old and ailing, the alleged ailment from which they were suffering is mentioned. There are no pleadings regarding hospitalization etc. It is also difficult to believe that the appellant No.1 was sitting idle all the while for a period of around two years at Ranchi. The contentions in the application, even if assumed to be true and correct, do not make out a case for condonation of delay of 374 days. The learned First Appellate Court has rightly rejected the application by observing that the contents of the application even if taken on its face value, do not constitute sufficient cause for condonation of delay of 374 days.

9. As regards the judgments on which the learned Advocate for the appellants has placed reliance, even if an opportunity to lead evidence was granted to the appellants, the evidence could not have

gone beyond the pleadings. As observed above, there are no pleadings as to why appeal could not be filed while the appellant No.1 was allegedly staying at Ranchi. It is reiterated that it is not case of the appellants that they were not aware about the adverse decree that is passed against them. Therefore, even if an opportunity to lead evidence had been granted to the appellants, in the considered opinion of this Court, the final outcome of the order would not have changed, since the appellants at best could prove what they have averred. The rule that evidence cannot go beyond the pleadings will obviously apply to a miscellaneous inquiry for condonation of delay as well. It must also be stated that the conduct of the appellants does not warrant exercise of discretion in their favour.

10. Since condonation of delay is a matter of discretion, it is necessary to record that the present second appeal was also not filed within the limitation. This Court however condoned the delay vide order dated 10.11.2023. Thereafter, the appeal was also dismissed for want of prosecution vide order dated 02.12.2024. It is also not in dispute that in the meantime, the respondents/plaintiffs have taken possession of the suit property in the execution proceedings. The learned Advocate for the appellants states that possession of the

suit property was taken prior to filing of the Second Appeal and the decree for mandatory injunction directing demolition of the structure is yet to be executed.

11. The question that is sought to be canvassed by the learned Advocate for the appellants is that without granting an opportunity to lead evidence, the application for condonation of delay should not have been decided by the learned First Appellate Court. The said question, in the facts of the present case, will not be a substantial question of law. At best, it can only be a technical question of law. The distinguishing between substantial question of law and technical question of law is well settled. A question of law, which even if it is answered in favour of the appellants does not have the effect of overturning the order in favour of the appellants, cannot be said to be a substantial question of law. In the present case, even if the appellants were permitted to lead evidence, at best they could have proved the averments made in the application, which, even if taken on its face value are not sufficient to condone delay of 374 days caused in filing appeal.

12. The above substantial question of law is answered against the appellants and in favour of respondents/plaintiffs. Second Appeal is therefore **dismissed**.

13. At this stage, the learned Advocate for the appellants states that although possession of the suit property is delivered to the respondents/plaintiffs in execution proceedings, a structure constructed by the appellants is still standing on the suit property and the decree for mandatory injunction for demolition of the said structure is not executed. He states that the undertaking given by the learned Advocate for the respondents/plaintiffs not to execute the decree further should be continued for a reasonable period so as to enable the appellants to approach the Hon'ble Supreme Court. However, the learned Trial Court has recorded in paragraph-10 of the judgment that the construction by the appellants was made in violation of order of interim injunction. Having regard to the aforesaid observation, the request for directions to continue the undertaking is **rejected**.

(ROHIT W. JOSHI, J.)

C.L. Dhakate