



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

Civil Application (CAS) No. 649 of 2024

in

Second Appeal St. No. 14535 of 2024

[Shri Ravindra S/o Krushnarao Awandkar and anr. ..vs.. Shri Satish S/o Krushnarao Awandkar]

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

Court's or Judge's orders

Mr. S. A. Kanetkar, Advocate for the applicants/appellants
Mr. D. S. Khushlani, Advocate for non-applicant/respondent through video
conferencing

CORAM : ANIL L. PANSARE J.

DATED : 16-01-2025

Heard.

2. The applicants are seeking to condone delay of 392 days in filing second appeal. The justification put forth is that the applicant no. 1 is old age person and suffering from multiple diseases and, therefore, could not travel to Nagpur, which is 230 Kms from his place of residence viz. Anjangaon-Surji.

3. This justification has been objected by learned counsel appearing for the non-applicant on two grounds, one is, that the applicants have not placed on record the medical certificate in support and secondly, the applicants have not assigned any reason as to why applicant no. 2 failed to act within time.

4. I have gone through the application to find that no reasons are assigned as to why applicant no. 2 did not act promptly. If the applicant no. 1 was not keeping well, for which also, no documentary evidence is placed on record, the applicant no. 2 could have acted

within time. Having failed to assign any reason on this point, I find substance in the argument put forth by the non-applicant that applicants have failed to show sufficient cause to condone delay.

5. The Supreme Court in the case of ***H. Guruswamy and ors. Vs. A. Krishnaiah Since deceased by LRs*** in ***Civil Appeal No. 317 of 2025***, on this point, observed thus :

“13. We are at our wits end to understand why the High Court overlooked all the aforesaid aspects. What was the good reason for the High Court to ignore all this? Time and again, the Supreme Court has reminded the District judiciary as well the High courts that the concepts such as “liberal approach”, “Justice oriented approach”, “substantial justice” should not be employed to frustrate or jettison the substantial law of limitation.

14. We are constrained to observe that the High Court has exhibited complete absence of judicial conscience and restraints, which a judge is expected to maintain while adjudicating a lis between the parties.

15. The rules of limitation are not meant to destroy the rights of parties. They are meant to see that the parties do not resort to dilatory tactics but seek their remedy promptly.

16. Once it is held that a party has lost his right to have the matter considered on merits because of his own inaction for a long, it cannot be presumed to be non-deliberate delay and in such circumstances of the case, he cannot be heard to plead that the substantial justice deserves to be preferred as against the technical considerations. While considering the plea for condonation of delay, the court must not start with the merits of the main

matter. The court owes a duty to first ascertain the bona fides of the explanation offered by the party seeking condonation. It is only if the sufficient cause assigned by the litigant and the opposition of the other side is equally balanced that the court may bring into aid the merits of the matter for the purpose of condoning the delay.”

As could be seen, the Supreme Court has categorically held that the rules of limitation are not meant to destroy the rights of parties and are meant to see that the parties do not resort to dilatory tactics but seek their remedy promptly. The Court further held that it is only if the sufficient cause assigned by the litigant and the opposition of the other side is equally balanced that the court may bring into aid the merits of the matter for the purpose of condoning the delay.

6. In the present case, the applicants having failed to show sufficient cause, I do not find merit in the application. The application is rejected with no order as to costs.

(Anil L. Pansare, J.)