



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

CIVIL APPLICATION (CAS) NO. 678 OF 2024 IN
SECOND APPEAL (ST) NO. 14897 OF 2024

[Smt. Tanabai wd/o Dheklaji Zade (since expired)..Vs.. Smt. Ekadashi
wd/o. Moreshwar Badule and ors]

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

Court's or Judge's order

Mr Mohd. Ateeque, Advocate for Appellant.
Mr. V. S. Giramkar, Advocate for the Non-Applicants/Respondent nos.1 to 5.

CORAM : **M. W. CHANDWANI, J.**

DATE : **12th AUGUST, 2025.**

1. Heard.

2. By the present application, the applicant/appellant is seeking condonation of delay of 468 days caused in filing the second appeal.

3. The contention is that, the judgment and decree came to be passed on 11.01.2023 by the Principal District Judge, Nagpur, in Regular Civil Appeal No. 298 of 2011 and the applicant/appellant engaged Advocate Akshay Rangari to file second appeal. However, he met with an accident in May, 2024. When the applicant came to know about the demise of his Advocate, he approached the office of Advocate Akshay Rangari and took all the case papers. Thereafter, he came to know that some case papers are missing from the record and on 29.06.2024, the applicant again applied for certified copy of the same which he received on 04.07.2024. Therefore, in that process, the delay has been caused in filing the appeal.

4. The application is opposed by the learned counsel for the non-applicants/respondent Nos.1 to 5 on the ground that the delay has not been properly explained particularly, prior to the death of Advocate Akshay Rangari and after the receipt of the certified copy on 04.07.2024. According to him, there is no sufficient cause for condoning the delay. To buttress his submission, he seeks to rely on the decision of the Hon'ble Supreme Court in the case of **State of Madhya Pradesh .Vs. Ramkumar Choudhary** in Special Leave Petition (C) Diary No. 48636 of 2024 decided on 29.11.2024, wherein it has been held that "sufficient cause" means an adequate and enough reason which prevented a party from approaching the Court within limitation.

5. Reliance has also been placed on the decision of the Hon'ble Supreme Court in the case of **H. Guruswamy and ors. .Vs. A. Krishnaiah Since deceased by LRS** in Civil Appeal No. 317 of 2025 decided on 08.01.2025, wherein it has been held that, once it has been held that a party has lost his right to have the matter considered on merits because of his own inaction for long, it cannot be presumed to be a non-deliberate delay and in such circumstances of the case, he cannot be heard to plead that substantial justice deserves to be preferred as against technical considerations. The Court owes a duty to first ascertain the *bona fides* of the explanation offered by the party seeking condonation. Further, reliance has also been placed on the decision of the Hon'ble Supreme Court in the case of **Rajneesh Kumar and anr. .Vs. Ved Prakash** in S.L.P. (C) Nos. 935-936 of 2021 decided on 21.11.2024, wherein the Hon'ble Supreme Court

has held that, the litigant owes a duty to be vigilant of his own rights and is expected to be equally vigilant about the judicial proceedings pending in Court initiated at his instance.

6. In the present case, the impugned judgment was passed on 11.01.2023 and as per the affidavit of the applicant, he had engaged Advocate Akshay Rangari to file the second appeal and had handed over all the papers to him. The fact that Advocate Akshay Rangari died in an untoward accident is not disputed. The accident occurred in the month of May, 2024. Axiomatically, it takes time to get the brief back from the office of the deceased lawyer. No one can expect to get the papers from the office of a deceased lawyer immediately because it will be very difficult to find where the case papers of the litigant are kept by the deceased lawyer.

7. No doubt, day-to-day delay has not been explained by the applicant; rather it is not expected from him. The Hon'ble Supreme Court in many judgments has observed that the applicant is not required to explain day-to-day delay, but has to come up with a cause which is sufficient to prevent him from filing proceedings before the Court. Since the factum of death of Advocate Akshay Rangari is not a disputed one, therefore, the applicant has made out sufficient cause. It is held in various decisions of the Hon'ble Supreme Court that sufficient cause has to be liberally construed and therefore, the observations made by the Hon'ble Supreme Court in the cases relied upon by the non-applicants will not come in the way of the applicant more

particularly, when the delay is not a *mala fide* one.

8. Therefore, the delay in filing the second appeal is hereby condoned subject to payment of costs of Rs. 5,000/- to “Gondia Bar Association” for the development of its library.

9. After the receipt of payment of costs of Rs. 5,000/- to Gondia Bar Association, the appeal be registered.

10. Accordingly, the application stands disposed of.

JUDGE

Tanmay.