



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

CIVIL APPLICATION (S) NO.765 OF 2023

IN

SECOND APPEAL (ST) NO.16593 OF 2022

[Smt. Shirin Tarannum Wd/o Nurul Haq Ansari and Ors. **..Vs..** Shama
Mehmood Ali 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 N. R. Bhishikar, Advocate for Applicants/Appellants.
Mr R. R. Dawda, Advocate for Non-Applicant/Respondent Nos.1 to 4.
Mr S. S. Das, Advocate for Non-Applicant/Respondent No.5.

CORAM : M. W. CHANDWANI, J.

DATE : 24th FEBRUARY, 2025.

1. Heard.

2. By the present application, the applicants/appellants seek to condone the delay of 1568 days caused in filing the appeal.

3. The present applicants who are the legal representatives of the original applicant/defendant, challenged the order dated 02.04.2016 passed by the Ad-Hoc District Judge No.2, Chandrapur, whereby the original applicant was directed to deposit the cost of Rs.6,000/- within one month from the date of the order. However, on 21.06.2016, the original applicant filed an application for extension of time to deposit the cost of Rs.6,000/-, which was not entertained. Therefore, on 04.08.2016, the original applicant filed Writ Petition No.5217 of 2016. However, by order dated 17.07.2018, this Court directed the original applicant to avail the remedy of

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filing second appeal. Meanwhile, the pandemic situation started. Thereafter, the original applicant to the proceedings died on 29.09.2021 and the appeal, alongwith the application for condonation of delay came to be filed by the legal representatives of the original defendant Noor-ul-Haq Ansari on 16.08.2022.

4. The learned counsel appearing on behalf of respondent Nos.1 to 4 strongly opposed the application on the ground that sufficient cause has not been explained more particularly, from 17.07.2018 till 29.09.2021, when the original defendant was still alive. To buttress his submission, he seeks to rely on the case of *Balwant Singh (Dead) vs. Jagdish Singh and Ors., (2010) 8 SCC 685*, wherein the Hon'ble Supreme Court has held that the law of limitation is a substantive law and has definite consequences on the rights and obligations of a party. These principles should be adhered to and applied appropriately depending on the facts and circumstances of the case. He also seeks to rely on the case of *State of Madhya Pradesh vs Ramkumar Choudhary, 2024 SCC OnLine SC 3612*, wherein it has been held that once the proceedings are filed after the period of limitation, then the delay in filing of the appeal has to be explained.

5. Having heard the learned counsels appearing for the respective parties and having gone through the material available on record, it appears that the application for extension of time to deposit the cost of Rs.6,000/- came to be filed before the District Judge, Chandrapur but the same

was not entertained as the time period of 30 days was already granted for depositing the cost. It also appears that thereafter, Writ Petition No.5217 of 2016 came to be filed before this Court and this Court *vide* order dated 17.07.2018 disposed of the same with liberty to the original applicant to take appropriate steps as are available in law.

6. It is a matter of record that the original defendant Noor-ul-Haq died on 29.09.2021. Needless to mention that, from 15.03.2020, the pandemic situation started and continued till March 2022. The application came to be filed in the month of August, 2022. So far as the post pandemic period is concerned, it is a matter of record that during covid period, the original defendant died and the legal representatives of the original defendant may not be aware of the exact nature of the proceedings. Turning to the period from 17.07.2018 till 29.09.2021, medical certificates have been filed on record from May, 2021 onwards whereby, the original defendant Noor-ul-Haq was suffering from some or the other disease.

7. The contention is that, prior to May, 2021, the responsibility of construction of a community hall was assigned to the original defendant. He was preoccupied with this task which resulted in the delay in filing this appeal within the stipulated time.

8. The non-applicants vehemently submitted that the original applicant being a professor was attending his duties

regularly and therefore, could have filed the appeal. No doubt, when seeking condonation of delay, a sufficient reason must be given as held in the case of *Balwant Singh* (supra). It was further held in the said case that even if the term 'sufficient cause' has to receive liberal construction, it must squarely fall within the concept of reasonable time and proper conduct of the concerned party. The purpose of introducing liberal construction normally is to introduce the concept of 'reasonableness' as it is understood in its general connotation. It has also been held that sufficient cause should be understood and applied in a reasonable, pragmatic, practical and liberal manner depending upon the facts and circumstances of the case, the type of case and the fact that the delay must be *bona fide* and not deliberate or a planned dilatory tactic. Rather, the decree has been passed against the original defendant i.e. the husband and father of the present applicants and nothing has been brought on record to show that the delay is intentional or is not *bona fide*. Not only this, but what has been challenged is the non-depositing of cost within a month, whereby the delay was condoned, meaning thereby that, the cost was intended to be deposited by the original defendant within a period of 30 days, as directed by the First Appellate Court.

9. Considering all these factors, I am inclined to exercise my discretion in favour of the applicants. So far as the inconvenience cause is concerned, I think a cost of Rs.20,000/- would suffice as a condition for condoning the

delay in filing the appeal. Hence, the application is allowed and the delay is hereby condoned subject to payment of cost of Rs.20,000/- to Tirora Bar Association, District Gondia, within a period of two weeks from today.

10. It is made clear that if the cost is not deposited within the stipulated period, then this application shall be treated as rejected.

11. The civil application stands disposed of accordingly.

JUDGE

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