



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

CIVIL APPLICATION (S) NO. 1203 OF 2023
IN
SECOND APPEAL ST NO. OF 18017/2023

Deepak Wasudeobhai Rathod and anr **Vs.** Prabhubhai Jadhavji Rathod and others.

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

Court's or Judge's orders.

Mr. N. L. Jaiswal, Advocate for appellants.
Mr. A. J. Mirza, Advocate for respondent no. 1.
Mr. C. B. Dharmadhikari, Advocate for respondent Nos. 3a, 4, 6,
7, 8A to 8E.

CORAM : M.W. CHANDWANI, J.
DATE : 05.08.2025.

1. Heard.
2. By the present application the applicant is seeking condonation of delay of 230 days caused in filing this second appeal.
3. The contention is that, the applicant was pursuing the matter by filing appeal against order (AO) before this Court and by order dated 05.06.2023, this Court disposed of the A.O. holding that the A.O. is not maintainable. Thereafter, the present second appeal came to be filed alongwith an application seeking condonation of delay in filing the appeal.
4. The application is opposed by all the respondents on the ground that the A.O. has been filed purposefully just to kill time. In spite of objection taken in the reply, the A.O. was not withdrawn and was allowed to be pursued. It is also contended that the applicant, for one or the other reason, is

causing hindrance in the trial of the suit.

5. Section 14(2) of the Limitation Act provides for exclusion of the period during which the applicant has been prosecuting other civil proceedings with due diligence. By the impugned order passed by the learned first Appellate Court, the order of the Trial Court rejecting the plaint of respondent no. 1 was set aside and the suit was restored. I am unable to agree with the argument of learned counsel for the respondent that the applicant purposefully filed the AO to kill time because the appellants who are suffering as a result of the order passed by the First Appellate Court, will not file AO before the wrong forum purposefully.

6. The learned counsel for the respondents were unable to demonstrate the prejudice caused to them while the applicant was pursuing the matter by filing the A.O. It appears that the A.O. was pending before this Court for 280 days. Therefore, in absence of anything on record to show that the delay is *mala fide*, coupled with the fact that substantial justice cannot be denied for technical reasons, the delay in filing the Second Appeal is hereby condoned, subject to payment of cost of Rs. 5,000/- to Gondia Bar Association, Gondia for the development of its library within two weeks from today.

7. The civil application is allowed and disposed of.

8. The appeal be registered.

SECOND APPEAL ST. NO. 18017 OF 2023

1. Mr. A. J. Mirza, learned counsel waives service of notice on behalf of respondent no. 1.

2. Mr. C. B. Dharmadhikari, learned counsel waives service of notice on behalf of respondent nos.3a, 4, 6, 7, 8A to 8E.

(M.W. CHANDWANI, J.)

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