



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CIVIL APPLICATION (CAS) NO.1111 OF 2024
IN
SECOND APPEAL ST NO.23062 OF 2024

Karimbano Mohd. Sharif Sayyad & ors. **Vs.** Sayyad Mohd. Iqbal Mohd. Sharif Sayyad
and anr.

*Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order*

Court's or Judge's Order

Ms. P.A. Thakkar, Advocate for applicants/appellants.
Mr. A. A. Dhawas, Advocate for non-applicant/respondent.

CORAM : ROHIT W. JOSHI, J.

DATE : 09.12.2025.

. This is an application seeking condonation of delay of 1,105 days in filing Second Appeal.

2. The judgment and decree passed by the learned First Appellate Court is dated 31.07.2019. The applicants have stated that there was a communication gap between them and their learned Advocate appearing before the learned First Appellate Court, as a consequence of which the fact of the decision in the appeal was not known to the applicants for a considerable period of time. It is stated that lockdown on account of Covid-19 pandemic was imposed from March 2020. In the meantime, the applicants had filed Second Appeal St. No.7262 of 2022 challenging the decree impugned in the present Second Appeal.

3. However, the learned Advocate for the applicants had filed a pursis dated 01.08.2024 seeking leave to withdraw the Second Appeal with liberty to file a fresh

second appeal. However, it appears from order dated 08.08.2024 passed by the learned Registrar (Judicial) that permission was granted to the applicants to withdraw the appeal, however, the order is silent with respect to the liberty as prayed.

4. The learned Advocate appearing for the respondent contends that although delay can be condoned having regard to the fact that, shortly after the limitation prescribed for filing second appeal had expired, lock-down on account of Covid-19 pandemic was imposed and the Hon'ble Supreme Court had extended the period of limitation till February 2022 and the earlier second appeal was filed on 02.05.2022, he contends that since the earlier second appeal is permitted to be withdrawn without any liberty, the present second appeal will not be maintainable.

5. I have perused the withdrawal pursis filed by the learned Advocate for the applicants appearing in the earlier second appeal. It is stated that there are several typographical errors and other mistakes in the appeal, as a consequence of which the learned Advocate deemed it appropriate to withdraw the same and file a fresh second appeal. However, the learned Registrar (Judicial) has permitted withdrawal of the appeal. The order of withdrawal is silent with respect to the aspect of liberty for filing a fresh second appeal.

6. In the considered opinion of this Court, a proper application ought to have been filed if the appeal was to

be withdrawn with liberty to file a fresh appeal. However, for a mistake committed by the Advocate relating to procedural aspect, in the considered opinion of this Court, the appellant should not be penalized.

7. It will also be pertinent to state that the earlier appeal filed by the appellants was not even registered and had never come up for hearing before the Court, although the application for condonation of delay was listed before this Court on a few occasions. The appeal never taken up for hearing. It therefore cannot be said that the applicants have taken recourse to any unfair practice. The applicants have not benefited in any manner by withdrawing the earlier second appeal and filing the present appeal afresh. Having regard to the totality of circumstances, in the considered opinion of this Court, application for condonation of delay deserves to be allowed.

8. However, having regard to the delay that has occasioned, it will be appropriate that the applicants are directed to pay cost of Rs.15,000/- to the respondent on or before **15.01.2026**. Subject to payment of cost the delay caused in filing second appeal stands condoned. In the event the cost is not paid or deposited with this Court on or before 15.01.2026, civil application shall stand rejected without further reference to the Court.

(ROHIT W. JOSHI, J.)