



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

CIVIL APPLICATION (S) NO.155 OF 2025
IN
SECOND APPEAL (ST) NO. 23707 OF 2024

Smt. Dushyanta w/o Mahadeo Chiwande

Vs.

Dr. Meghshyam s/o Keshavrao Bhagwat

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

Court's or Judge's Order

Ms. Bhagyashree N. Gavhale, Advocate (appointed) for applicant.
Mr. Rohan Bhisikar, Advocate for respondent

CORAM : ROHIT W. JOSHI, J.

DATE : 11.12.2025.

. There is a delay of 691 days in filing Second Appeal. The applicant is original defendant No.3. Suit for removal of encroachment filed by the respondent came to be decreed against the present applicant and other defendants. The defendant No.1 is a registered Public Trust. The other defendants including, present applicant, were arrayed as defendants as office bearers and members of the Trust. The present applicant was arrayed as defendant No.3 in her capacity as Secretary of the defendant No.1/Trust. Being aggrieved by the decree for removal of encroachment, Regular Civil Appeal No.44/2009 was filed by the present applicant along with other defendants. The said appeal came to be dismissed for want of prosecution vide order dated 20/06/2012. The present appellant filed application for restoration of appeal on 20/07/2020 along with

application for condonation of delay. The said application came to be rejected by the learned First Appellate Court vide impugned order dated 08/03/2021.

2. The applicant has stated in the Civil Application that she was not aware about all the particulars with respect to the ongoing litigation. She has stated that other defendants were looking after the litigation and were fully conversant with the same. It is averred that all other defendants, except the applicant, have expired and that the learned Advocate who was representing the defendants, including applicant, was also no more. It is then stated that the applicant gathered knowledge about the impugned order only on being served with notice in execution proceedings.

3. The present applicant is the Secretary of defendant No.1-Trust. Defendant No.1 is a registered Public Trust. It is inconceivable that the Secretary of a registered Public Trust will not be aware about the ongoing litigation against the Trust and its trustees. Normally, it will have to be assumed that the Secretary will not only be aware about the ongoing litigation but will also be the person who is actively involved in contesting the litigation. The applicant has stated that other defendants/trustees were looking after the litigation. However, she has not even named the alleged person who was looking after the litigation. It needs to be stated that the dates of demise of the other

defendants/trustees is also not mentioned. Likewise, it is stated that the learned Advocate, who was representing the Trust and its trustees, including the applicant, has expired. Even his date of demise is not mentioned.

4. Moreover, perusal of paragraph 5 of the application will indicate that the applicant has stated that the applicant intended to file an appeal within period of limitation and had approached the High Court Legal Aid Committee for the said purpose. This statement in paragraph 5 of the application clearly indicates that the applicant was aware about the impugned order before limitation for filing of the appeal expired.

5. Perusal of paragraph 5 of the application will demonstrate that the applicant obtained certified copies as advised by panel Advocate. The application is absolutely silent as to why the appeal could not be preferred within limitation, despite being aware about the impugned order and the applicant approaching the legal aid cell within the prescribed period of limitation. It must be stated that the delay is around one year and ten months. Applicants in the application are completely silent as regards such inordinate delay in filing of appeal.

6. It needs to be stated that the record indicates that the applicant and other defendants were completely negligent in prosecuting the litigation. In this context, it needs to be mentioned that the present proceedings arise out of Regular Civil Appeal No.44 of 2009, which was

dismissed for want of prosecution on 20.06.2012 and application for restoration of appeal was filed on or about 27.07.2020 i.e. after the period of around 8 years. This fact is mentioned only in order to demonstrate the conduct of the applicant and other defendants in prosecuting the litigation.

7. In view thereof, no case is made out for condonation of inordinate delay of 691 days. Therefore, the application for condonation of delay is **rejected**.

8. Fees of appointed counsel be paid as per schedule.

(ROHIT W. JOSHI, J.)

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