



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

Writ Petition (WP) No. 7166 of 2024

Gajanan S/o Bhaurao Bhandare

Versus

Ratnabai W/o Manoharrao Kamade and another

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

Court's or Judge's Order

Mrs. Meena Hiwase, Advocate for the petitioner.

Shri M.A.Sable, Advocate for the respondent no.1.

CORAM : PRAVIN S. PATIL, J.

DATED : 28th FEBRUARY, 2025.

Heard.

2. By way of present petition, the petitioner is challenging the judgment and order dated 22nd October, 2024 passed in Civil Misc. Application No. 41 of 2024 decided by the learned District Judge-1 and Additional Sessions Judge, Warud, District Amravati.

3. Admittedly, in the present case, the application for condonation of delay along with appeal filed under Section 96 of the Code of Civil Procedure was decided by the learned District Judge and thereby rejected the application for condonation of delay.

4. As per the law laid down by the Hon'ble Supreme Court as well as this Court, it is clear that decision on the application for condonation of delay in filing the appeal amounts to judgment in appeal. As such, the petitioner has alternate remedy to file the statutory appeal under the provisions of the Code of Civil Procedure. Respondent has rightly relied upon the judgment passed by Co-ordinate Bench of this Court in Devidas Ganpati Kale and others Vs. Munirbi Mahebub Karanje and others reported in 2024(1) Bom. CR 47, wherein it is held that, if an application for condonation of delay in filing the appeal is dismissed, then, such dismissal amounts to a decree of Appellate Court, which is challengeable under Section 100 of the Code of Civil Procedure.

5. In view of this legal position, the petitioner seeks permission to withdraw the present petition with liberty to file appeal under Section 100 of the Code of Civil Procedure against the impugned judgment and

decree. Accordingly, permission is granted to withdraw the present petition with liberty to file second appeal.

6. The period from filing of present petition till date of decision will be excluded for counting the period of limitation as per Section 14 of Limitation Act.

7. The writ petition is accordingly disposed of in aforesaid terms.

[PRAVIN S. PATIL, J.]