



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

WRIT PETITION NO.1338/2025

Smt. Parvatibai Dayaran Surve .Vs. Tulshiram Parashram Patil and anr.

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

Court's or Judge's orders

Mr. A. D. Girdekar, Advocate for petitioner.
Mr. S. K. Patil, Advocate for respondent No.1.

CORAM : ANIL L. PANSARE, J.

DATE : JULY 8, 2025

On 13.06.2025, following order was passed.

"Heard.

2. The application seeking stay to the impugned decree has been rejected by the First Appellate Court, mainly on the ground that the delay in filing appeal has been not duly justified.

3. As such, the application seeking to condone the delay is pending and in such situation, stay could be granted. The question however is the First Appellate Court noted that there is a delay of about 3 ½ years in filing the appeal and secondly that the delay has been not duly justified.

4. In context with above, I have gone through the application filed by petitioner-appellant seeking to condone the delay. First reason is that pending suit, the matter came to be settled amicably between the parties on 15.01.2020. The matter is said to be settled with the intervention of two villagers namely Vishwnath Surve and Vishnu Surve. The petitioner has not annexed their statements or any evidence to show that the dispute was indeed settled between the parties. In absence thereof, mere statement will not serve the purpose.

5. The petitioner continue to say that because of such settlement, she did not attend the Trial Court presuming that the respondent will withdraw the suit. However, the respondent did not and accordingly suit came to be decreed vide judgment and decree dated 12.03.2020. She then states that she came to know of the alleged fraud played by respondent when in June, 2023, she received a notice on Regular Darkhast filed

by the respondent. Thereafter, she obtained opinion and also document and because of her age, the same could not be collected till August, 2023. She received certified copy on 16.08.2023 and accordingly filed appeal on 30.08.2023.

6. To my mind, in absence of any evidence muchless cogent evidence as regards settlement on 15.01.2020 and further in absence of justified reason to not act immediately in June, 2023, it will be difficult to extend any concession to the petitioner only because she is an old aged lady.

7. Nonetheless, the petitioner should get an opportunity and, therefore, shall place on record the document, if any, in support of her claim that the dispute was settled amicably between the parties on 15.01.2020 in the presence of Mr. Vishwnath Survey and Vishnu Surve and shall also place on record certified copy of Roznama for the period prior to 15.01.2020, say for the period from 01.07.2019 till judgment was delivered. The petitioner shall place on record copy of notice which she received and the bailiff's report in that regard so far as execution proceedings are concerned. The petitioner shall further place on record the steps taken by her from June, 2023 till the period she lodged application for seeking certified copy of judgment. Once the documents are filed, the Court may consider the prayer for interim relief.

8. The petitioner is accordingly directed to submit documents at the earliest and get the matter circulated once the documents are filed. List thereafter."

2. In response, counsel for the petitioner has placed on record copy of Roznama. Perusal of the same indicates that the petitioner was absent even prior to 15.01.2020, the date when the matter was allegedly settled between the parties.

3. Amongst other Roznamas, Roznama dated 15.10.2019, indicates that the evidence of petitioner was closed. The previous Roznama indicates that the petitioner sought time to lead evidence.

4. Another Roznama dated 07.01.2020 indicates that the counsel appearing for the parties argued the matter finally and the

suit was fixed for judgment on 17.01.2020. Thus, the petitioner was aware that prior to 15.01.2020, the suit was heard and was reserved for judgment. In the circumstances, plea that the petitioner remained absent after 15.01.2020, is known to the petitioner to be incorrect. It appears that subsequent to 15.01.2020, at the instance of the respondent, another witness came to be examined and ultimately, the parties put forth their argument on 17.02.2020 and again the suit was fixed for judgment.

5. In the circumstance, it cannot be said that the petitioner remained absent only because there occurred alleged settlement. She remained absent prior to the date of alleged settlement as well. Considering such conduct and since the only plea that was raised was petitioner's age, to my mind, the First Appellate Court was fully justified in not granting stay to the impugned decree pending application seeking to condone the delay. There is, thus, no substance in the petition.

6. The petition is, accordingly, dismissed. The petitioner, however, is at liberty to revive her prayer if the delay in filing the appeal is condoned by the First Appellate Court.

(Anil L. Pansare, J.)