



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

CIVIL APPLICATION (CAS) NO. 751 OF 2024

IN

SECOND APPEAL ST. NO. 14917 OF 2024

SUREKHA PRADIP MALEWAR AND OTHERS

VERSUS

SUNIL LAXMANRAO WAGHADE (Dead) THRU. Lrs SMT. SADHANA AND OTHERS

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

Court's or Judge's Order

Mr. Parth Ranade, Advocate h/f Mr. H. V. Thakur, Advocate for the
appellants/applicants
Mr. R. M. Vaidya, Advocate for respondent nos.1a to 1c

CORAM : M. W. CHANDWANI, J.

DATE : AUGUST 20, 2025.

1. Heard Mr. Parth Ranade, learned counsel holding for Mr. H.V. Thakur, learned counsel for the applicants and Mr. R. M. Vaidya, learned counsel for the non-applicants.

2. By the present civil application, the applicants are seeking condonation of delay of 198 days caused in filing the Second Appeal.

3. The contention is that, the certified copy of the impugned judgment dated 17.07.2023 was received on 09.08.2023. All the applicants are residing at different places and for filing the second appeal, collective decision was required to be taken. It is further contended that the daughter of the appellant/applicant no.2 is a differently abled lady and has history of seizures and fits. Her condition aggravated from August 2023 to December,

2023 and therefore, applicant no.2 was unable to attend the joint meeting of all the applicants to take a decision about filing of the proceedings. It is also contended that thereafter, appellant/applicant no.1 underwent angioplasty on 31.03.2024 and after she recovered, a meeting took place amongst them. Thereafter, a collective decision of filing second appeal was taken and ultimately on 08.05.2024 this second appeal has been filed. Due all this, the delay has occurred. According to the learned counsel for the applicants, there are sufficient reasons which prevented the applicants from filing the appeal within limitation.

4. The learned counsel for the non-applicants appeared and filed reply. The non-applicants objected the application on the ground that no sufficient reason has been given by the applicants explaining the delay. It is also contended that no explanation has been given for the period from January-24 till filing of the appeal. Therefore, the application is required to be rejected.

5. In the present case, the medical certificate in respect of intellectual disability of the daughter of appellant no.2 has been filed on record. The discharge summary of appellant no.1 is also filed on record. All the sisters contested the suit for partition against the brother collectively and for filing second appeal, joint decision was required to be taken in which the delay has been caused.

6. No doubt, the appellants have to explain the delay by giving sufficient cause, however, it is not necessary for

them to explain day to day delay. It will be useful to refer to the decision in *Sheo Raj Singh (Deceased) thru. Legal Representatives and others .vs. Union of India and another*, reported at *(2023) 10 SCC 531* wherein, the Supreme Court has observed that 'sufficient cause' should be adequately elastic to enable the Courts to apply the law in a meaningful manner which subserves the ends of justice and should be considered with pragmatism in a justice-oriented approach rather than the technical detection of sufficient cause for explaining every day's delay. The length of delay is not always decisive while exercising discretion, if the delay is properly explained.

7. Considering the reasons mentioned in the application and the medical certificates placed on record, more particularly when there is nothing on record to show that the delay in filing the appeal is *mala fide*, in my view, substantial justice cannot be denied for technical reasons. Therefore, the delay of 198 days caused in filing Second Appeal is hereby condoned.

8. Accordingly, the civil application is allowed and disposed of.

9. The Second Appeal be registered.

(M.W.Chandwani, J.)