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

CIVIL APPLICATION (CAO) NO. 1600 OF 2024

IN

MISC. CIVIL APPLICATION (ST) NO. 23771 OF 2024

IN

FIRST APPEAL NO. 465 OF 2014

(VIDC, Wardha V/s Randhir Vishwasrao Shirpurkar & Ors.)

Office Notes, Office Memoranda of Coram,
Appearances, court's orders or directions and
Registrar's orders

Court's or Judge's orders

Mr. Abhijit Parihar, Advocate for Appellant.
Mr. P. D. Meghe, Advocate for Respondent No.1.
Mr. M. A. Kadu, AGP for Respondent Nos.2 & 3.

**CORAM : PRAVIN S. PATIL, J.
DATE : NOVEMBER 21, 2025.**

. Heard.

2. By this Application, the Appellant/Applicant is seeking condonation of 1962 days delay in filing application for restoration of First Appeal No. 465/2014, which was dismissed vide order dated 7/3/2017 passed by this Court.

3. I have perused the Application. The reason stated by the Appellant is that the learned Counsel has handed over the case papers of the present Appeal to the Appellant/VIDC in the year 2017. According to the learned Counsel for Appellant, after handing over of the case papers, this matter was dismissed by this Court for non-filing of paper book in terms of order of this Court dated 7/3/2017.

4. Later on, in the year 2020, the Appellant/VIDC has again handed over the case papers to the learned Counsel for Appellant. During that period, due to outbreak of COVID-19 pandemic, functioning of the Court was virtually stopped, and therefore, he could not notice the fact that this Appeal has been already dismissed as per the order dated 7/3/2017.

5. It is stated in the Application that when the execution proceeding has been filed before the Reference Court at Wardha, at that time, it came to the knowledge that Appeal is dismissed for non-filing of the paper book in terms of order dated 7/3/2017. As such, in the background of factual aspect, delay of 1962 days has been caused in filing the restoration application.

6. The Respondent No.1/Claimant has strongly opposed this application. According to the Respondent No.1, after dismissing the Appeal on 7/3/2017, near about ten to eleven months they did not move any application with a hope that Appellant/Applicant may move application for restoration of Appeal as Appeal was dismissed for not filing of private paper book in the matter, but for the considerable period no steps were taken by the Appellant/Applicant. Therefore, they have moved an application for withdrawal of the amount, which was already deposited by the Appellant in this Court in the month of January-2018.

7. The said application was listed before this Court on

7/2/2018. On that day no one appeared on behalf of the Appellant. This fact is specifically noted by this Court while allowing Civil Application No. 291/2018.

8. It is further stated that after dismissal of the First Appeal, Respondent No.1 prosecuted the execution proceeding filed before the Reference Court at Wardha. Before the Reference Court at Wardha, present Appellant, who was aware of everything, without any protest deposited the entire decretal amount in the execution proceeding. In this regard he has placed on record the communication of Appellant in the name of Civil Judge Senior Division, Wardha stating that the High Court has dismissed their Appeal by order dated 7/3/2017, and therefore, they are depositing the remaining 50% of amount in the executing court. As such, it is the submission of the Respondent/Claimant that the Appellant was well aware about the fact that this Appeal has been already dismissed by this Court by order dated 7/3/2017.

9. In the circumstances, it is the submission of the present Respondent No.1/Claimant that the delay which is caused in filing restoration application cannot be said to be *bona fide* and the reasons stated in the Application are not acceptable in the matter.

10. The Respondent No.1 has placed reliance upon the Judgment of the Hon'ble Supreme Court of India in the case of *Shivamma (Dead) by L.Rs. V/s Karnataka Housing Board and*

Others, 2025 INSC 1104. According to this Judgment, the Hon'ble Supreme Court of India has observed that High Court should not give a legitimising effect to such callous attitude of State authorities or its instrumentalities, and should remain extra cautious, if the party seeking condonation of delay is a State authority. The Hon'ble Supreme Court in this regard has drawn its conclusion in paragraph Nos.261 and 262 as under :

“261. Thus, for the reasons aforesaid, the impugned order of the High Court deserves to be set aside. Before we proceed to close this Judgment, we deem appropriate to make it abundantly clear that administrative lethargy and laxity can never stand as a sufficient ground for condonation of delay, and we want to convey an emphatic message to all the High Courts that delays shall not be condoned on frivolous and superficial grounds, until a proper case of sufficient cause is made out, wherein the State machinery is able to establish that it acted with bona fide and remained vigilant all throughout. Procedure is a handmaid to justice, as is famously said. But courts, and more particularly, the constitutional courts, ought not to obviate the procedure for a litigating State agency, who also equally suffer the bars of limitation from pursuing litigation's due to its own lackadaisical attitude.

262. The High Courts ought not give a legitimising effect to such callous attitude or State authorities or its instrumentalities, and should remain extra cautious, if the party seeking condonation of delay is a State authority. They should not become surrogates for State laxity and lethargy. The constitutional courts ought to be cognisant of the apathy and pangs of a private litigant. Litigants cannot be placed in

situations of perpetual litigation's, wherein the fruits of their decrees or favourable orders are frustrated at later stages. We are are pains to reiterate this everlasting trend, and put all the High Courts to notice, not to reopen matters with inordinate delay, until sufficient cause exists, as by doing so the courts only add insult to the injury, more particularly, in appeals under Section 100 of the CPC, wherein its jurisdiction is already limited to questions of law.”

11. The Respondent No.1 further stated that considering the Judgment of the Hon'ble Supreme Court of India, in the case of ***Shivamma*** (*cited supra*) and other relevant Judgments of the Hon'ble Supreme Court, recently the High Court of Chhattisgarh at Bilaspur in W. A. No.796/2025 (*State of Chhattisgarh V/s Mangala Sharma*) has considered the issue of condonation of delay, in which the State Government was a party, on whose instance the delay was caused in the matter. According to the Respondent No.1, this Judgment of Chhattisgarh High Court, in view of the facts and law discussed therein, is categorically applicable in the facts and circumstances of the present case. Paragraph No.9 of the Judgment, which is relevant in the matter is reproduced as under :

“9. Upon considering the matter in its entirety and also applying the well settled principles of law to the facts of the present case, we find that the State has failed to provide any proper or satisfactory explanation for the delay in filing the present appeal. The only reason cited is that the Law & Legislative Affairs Department, Government of Chhattisgarh, Mantralaya, Naya Raipur, had forwarded a proposal to the Office of the Advocate General for initiating an appeal

against the impugned order dated 23.04.2025. Thereafter, the case was processed, and the present Petition was ultimately filed. However, this sequence of events, lacking in specificity or justifiable cause, does not amount to a cogent or acceptable explanation. Thus, the State has miserably failed to demonstrate sufficient cause warranting the condonation of an inordinate delay of 107 days.”

12. In the present Appeal, it is clear from the record that there is a communication dated 26/11/2019 from the Appellant to the learned Civil Judge Senior Division, Wardha, wherein, the Appellant itself has informed the Civil Judge Senior Division, Wardha that this Appeal has been dismissed by this Court by order dated 7/3/2017 and thereby deposited the entire balance amount before the executing court. Hence, it cannot be said that the Appellant was not having knowledge of the order of this Court.

13. As per the law laid down by the Hon'ble Supreme Court of India, if the authority was having knowledge of the fact that the matter has been already dismissed and even then no steps were taken by them, certainly the authority has to face the consequences in the matter.

14. It is not the case of the Appellant that when they have handed over the case papers to the learned Counsel, they have informed him that this Court has dismissed the Appeal on 7/3/2017 and he should take necessary steps in the matter. No document in that regard is available on record. Therefore, I am of the opinion that learned Counsel is not responsible for delay in the

matter. It is the Appellant/Corporation, who was not diligent in prosecuting the present Appeal. Thus, for the reasons stated above and the law laid down by the Hon'ble Supreme Court of India, I am of the considered opinion that Appellant failed to give any justified reasons for condonation of 1962 days delay in filing the restoration application. Hence, for the reasons stated above, Civil Application stands rejected.

[PRAVIN S. PATIL, J.]

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