



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

CIVIL APPLICATION (CAS) NO.89 OF 2025
IN
SECOND APPEAL ST. No.1426 OF 2025

(Pundlik Bhagwan Chopade (dead), through Lrs. 1a) Kalubai Pundlik Chopade and others
Vs. Mahesh s/o. Laxman Pardeshi and others)

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

Court's or Judge's orders.

Mr. N.B. Kalwaghe, Advocate for appellant.
Mr. A.V. Bhide, Advocate for respondent Nos.1 and 2 & 4.

CORAM : NITIN W. SAMBRE, J.

DATE : 09th APRIL, 2025.

1. Mentioned. Taken on board by consent.
2. As far as prayer for condonation of delay is concerned Mr. A.V. Bhide, learned counsel appearing for the respondent-original defendant strenuously opposed the prayer as according to him the delay is not properly explained and there is lack of bona fides. It is claimed that there is inordinate delay which this Court may not condone mechanically.
3. If this Court consider the aforesaid objection in the light of the reasons cited in the application, timely steps were taken by the appellant in the matter of not only engaging counsel and handing over papers but also the instructions were issued to the local counsel to take steps for filing of the second appeal. It appears that the local counsel claimed to have instructed another counsel at High Court to file the second appeal. However, there appears to be a communication gap

which led to non-filing of the appeal within time.

4. The counsel at Akola, who was handling the first appeal has issued a communication to that effect which is placed on record in support of the contentions raised for condonation of delay.

5. In the aforesaid background it has to be inferred that the aggrieved party i.e. applicant has taken timely steps in the matter by instructing the Advocate, however, he has not kept the track of the matter as regards filing of the appeal. As such, for the default of the Advocate the litigant may not be required to suffer.

6. Reliance can be placed on the Apex Court Judgment in the matter of **Rafiq and another Vs. Munshilal and another**, reported in **(1981) 2 SCC 788**, wherein the Apex Court has laid down the law that for the default of the lawyer a litigant may not be required to suffer.

7. In this background, I deem it appropriate to condone the delay, subject to payment of costs of Rs.3,000/- to be paid to the non-applicant.

8. I permit the costs to be tendered to the counsel appearing for the non-applicant Mr. A.V. Bhide. As such, the application for condonation of delay stands allowed.

9. I have heard Mr. N.B. Kalwaghe, learned counsel for the appellant on merits of the second appeal.

10. It is his contention that based on the oral agreement of licence which was terminated, the claim for possession was initiated based on title which was decreed. However, the Appellate Court reversed the same.

11. Issue notice to the respondents.
12. Mr. A.V. Bhide, learned counsel waives service of notice on behalf of respondent Nos.1 to 4.
13. Post the matter for admission after Summer Vacation 2025.

(NITIN W. SAMBRE, J.)

Wadode