



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

CIVIL APPLICATION [CAS] NO. 276 OF 2025

IN

SECOND APPEAL ST. NO. 2446 OF 2025

KRISHNA S/o SHANKARRAO BAHADURE

VERSUS

SANJEEV SHEKHAR S/o UMESHWAR PRASAD

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

Court's or Judge's Order

Mr. P. P. Kotwal, Advocate for the appellants
Mr. P. P. Kothari, Advocate for the respondent.

CORAM : M. W. CHANDWANI, J.

DATE : JULY 11, 2025.

1. Heard Mr. P. P. Kotwal, learned counsel appearing on behalf of the applicant/appellant and Mr. P. P. Kothari, learned counsel appearing on behalf of the non-applicant/respondent.
2. By the present application, the applicant/appellant seeks condonation of delay of 96 days caused in preferring the Second Appeal before this Court.
3. The grounds mentioned in paragraph 3 of the application are that the applicant could not approach his counsel because of financial constraints as the daughters of the applicant are pursuing higher studies. One of his daughters is studying in the Unites State of America and the another one at Pune. He could not arrange the amount for the Court Fees and lawyer's fees. According to the learned counsel for the applicant, he has a good case on merits and for technical reasons, the doors of justice

cannot be shut. According to him, there is a delay on the part of the counsel because he took time to study the matter. Therefore, there was a delay of 96 days in filing the appeal. Learned counsel seeks to rely on the judgment of the Apex Court in ***Dwarika Prasad (D) thru. LRs vs. Prithvi Raj Singh***, reported at ***2024 SCC Online SC 3828*** wherein, at paragraphs 9 and 12, the Hon'ble Supreme Court has held that on technical grounds, the Courts should not shut out cases on mere technicalities but rather an opportunity should be afforded to both the sides. The matter should then be decided on merits.

4. Learned counsel for the respondent objected the application on the ground that financial constraint cannot a ground to condone the delay. According to him, the applicant could have approached the Legal Services Authority of this Court for legal assistance. According to the learned counsel, the grounds mentioned in the application are not sufficient to condone the delay. In order to buttress his submission, he relied on a judgment of the learned Single Judge of this Court in ***Civil Revision Application No. 102 of 2017 (Pradeep Motiram Shende vs. Smt. Tejram Yadavrao Urade)***, decided on 29.08.2017 wherein, considering the fact that the applicant did not explain his status in life coupled with the fact of non-explanation of appearance of the applicant in the execution proceedings before the Executing Court in September, 2015, this Court did not approve the condonation of delay granted by the first Appellate Court.

5. Let me state that while considering delay condonation applications, apart from sufficient grounds, the Court has to see whether the delay is *mala fide* one or not. Here, there is nothing on record to suggest that the applicant purposefully caused delay in approaching this Court. In ***Pradeep Motiram Shende*** (supra), the applicant did not explain why in spite of appearance before the Executing Court, the condonation of delay was sought. Therefore, considering the facts of the present case, the decision in ***Pradeep Motiram Shende*** (supra) will not help the non-applicant/respondent.

6. It is a settled law that liberal approach is to be adopted by the Courts while dealing with delay applications. No prejudice will be caused to the non-applicant, particularly when there is nothing on record to show that the delay was *mala fide*. Procedure is after all, the handmaid of justice.

7. Therefore, the application is allowed. The delay of 96 days caused in filing Second Appeal is condoned. The application stands disposed of. No order as to costs.

8. The Second Appeal be registered.

Civil Application (CAS) No. 277 of 2025

1. Heard the learned counsel for the parties.
2. This is an application for grant of stay.
3. Learned counsel for the applicant/appellant submits that the execution proceedings pending before the Executing Court are fixed for today and he apprehends

that the Executing Court may issue the warrant of possession.

4. Considering the submission, by way of interim direction the Executing Court is directed not to proceed in the matter till the next date.

5. Stand over to 28.07.2025.

(M.W.Chandwani, J.)

Diwale