



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

SECOND APPEAL NO. 370 OF 2025

(SMT. MEENA W/O SHANKAR KHAPEKAR VS SMT. MITHIL S/O DHANRAJ DOBAKAR)

*Office Notes, Office Memorandum of Coram,
appearances, Court's orders or the directions,
and Registrar's orders.*

Court's or Judge's order

Mr. A.B. Moon, Advocate for appellant.
Mr. A.A. Bansod, Advocate for respondent.

CORAM : ROHIT W. JOSHI, J.
DATED : FEBRUARY 27, 2026

- 1) The present appellant has suffered an ex-parte decree for eviction and possession vide judgment and decree dated 16/01/2017 passed by the learned 2nd Joint Civil Judge Junior Division, Nagpur in R.C.S. No.164/2015. The appellant/defendant intended to challenge the said decree by filing appeal. However, there was a delay of around 170 days in filing of the appeal, for which a separate application for condonation of delay was filed. The said application came to be registered as M.C.A.No. 563/2017. The learned 3rd Adhoc District Judge, Nagpur has rejected the said application vide order dated 22/01/2020. The appellant has stated in the application for condonation of delay that she is an old illiterate lady who was not aware about the Court procedure and that she had earlier engaged one Advocate to represent her in the said suit. He states that she had taken the case papers from the said Advocate and handed over to another Advocate to represent her in the suit. The contention is that despite engaging new Advocate the suit was not contested. The contention, in brief, is that if the appellant who is an old lady is not aware of the Court

proceeding, she was not personally responsible for not contesting the suit on merits.

2) The learned first appellate Court has rejected the application for condonation of delay on the ground that the appellant being an illiterate lady cannot be considered to be a sufficient and good ground to condone the delay. The learned appellate Court has observed that the appellant did not file written statement in the suit and merely blamed her Advocates for not attending the proceedings in the civil suit.

3) The delay is of around 170 days. The appellant is lady aged around 64 years. Her age is mentioned as 55 years in the application for condonation of delay. Taking a lenient view of the matter, the delay could have been condoned. However, perusal of the application for condonation of delay as also the memorandum of appeal filed along with the application indicate that the only contention sought to be raised is that the applicant was placed in possession of the suit property by the father of the plaintiff pursuant to an oral agreement of sale. It is contended that an amount of Rs.70,000/- was paid by her to the plaintiff's father in terms of the said oral agreement. However, perusal of the application and memorandum of appeal demonstrates that the date or even tentative period of alleged agreement is not mentioned. The applicant admits to be a permissive occupant and claims right to retain the possession on the basis of oral agreement of sale. Therefore, even if the delay is condoned and the defence raised is accepted as it is, the appellant will not be in a position to oppose the suit for possession merits since the alleged agreement is not by way of a written document and it is obviously not registered. The appellant therefore, cannot take shelter of Section 53-A of the Transfer of Property Act.

- 4) Learned counsel Mr.Moon, fairly sates that this is the only ground on which the decree for possession can be opposed on merits.
- 5) In view of the aforesaid although in other circumstances, the application could have been allowed, having regard to the defence that the appellant intends to take on merits of the case, this Court is not inclined to allow the appeal, since the decree passed by the learned trial Court cannot be disturbed even if the defence sought to be raised is accepted to be duly proved and correct. The appellant will be unnecessarily embroiled in fruitless litigation, if delay is condoned.
- 6) In that view of the matter, substantial question of law framed vide order dated 23/01/2026 is answered in favour of the respondent/plaintiff and against the appellant/defendant.
- 7) In the peculiar facts of the case, the appellant is granted time to vacate the suit property till **28/02/2027**.

(ROHIT W. JOSHI, J.)