



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

SECOND APPEAL NO.299 OF 2025

Satyabhama Bai Wd/o Satoshrao Radke and others .Vs. Sheela Devi W/o
Ramashankar Prasad and another

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

Court's or Judge's Order

Mr. R.I. Agrawal, Advocate for appellants.

CORAM : ROHIT W. JOSHI, J.

DATE : 21/01/2026

1. Application for condonation of delay of around 118 days in filing first appeal came to be rejected by the learned First Appellate Court. Perusal of the application will indicate that original applicant/Satybhamabai, has expired and are represented by her legal representatives. Most of the legal representatives are senior citizens. The applicant No.2/appellant No.2 who has also expired is also represented by his legal representatives who are 70 and 59 years of age. The delay is explained on the ground that due to their old age, the applicants could not approach the Advocate within time for the purpose of filing of appeal and therefore there is delay of 118 days caused for filing first appeal.

2. The learned Advocate for the respondents contends that the decree for mesne profit is already executed and therefore, the second appeal should not be entertained. The learned Advocate for the respondent contends that

during the relevant period, the execution proceedings were being prosecuted by the present appellants, who are the decree holders.

3. The preliminary objection with respect to maintainability of the appeal is answered by the learned Advocate for the respondent contending that as against claim of mesne profits at the rate of Rs.25,000/- per month mesne profit are granted at the rate of Rs.450 per month and therefore, the appeal was preferred for enhancement of mesne profit.

4. In the considered opinion of this Court, the preliminary objection that the decree satisfied deserves to be rejected, since despite the execution of the decree, it will be open for the appellants to prosecute the appeal seeking enhancement of mesne profits.

5. As regards the contention that the delay is not properly explained, I am of the opinion that since first appeal is a substantive right of the parties and it is well settled that while dealing with application for condonation of delay a liberal approach should not be adopted, the learned First Appellate Court should have allowed the application, particularly having regard to the age of most of the applicants.

6. In view of the aforesaid, the substantial question of law framed vide order dated 12.11.2025, is answered in faovur of the appellants and against the respondents.

7. Judgment and order dated 20.06.2025, passed by the learned Spl. Court for Differently-able persons, Senior Citizens and Marginalized Sections of the Society, Nagpur, in Misc. Civil Application No.413 of 2023, is quashed and set aside and the said application for condonation of delay is **allowed**.

(ROHIT W. JOSHI, J.)

C.L. Dhakate