



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

**WRIT PETITION NO. 5625 OF 2025**

1. Vinod S/o. Ramesh Yelekar,  
Age : 41 Years, Occu. : Private,  
R/o. Ward No.4, Shikshak Colony,  
Bramni, Tq. Kalmeshwar, Dist. Nagpur.
2. Ramesh S/o. Dajibaji Yelekar,  
Age : 63 Years, Occu. : Retired,  
R/o. Ward No.4, Shikshak Colony,  
Bramni, Tq. Kalmeshwar, Dist. Nagpur.
3. Roshan S/o. Ramesh Yelekar,  
Age : 36 Years, Occu. : Service,  
R/o. Ward No.4, Shikshak Colony,  
Bramni, Tq. Kalmeshwar, Dist. Nagpur.

**.... Petitioners**

***VERSUS***

1. Nitin S/o. Madhukarrao Bambal,  
Age : 36 Years, Occu. : Agriculturist,  
R/o. Ward No.3, Near Sasraji Maharaj  
Math, Tq. Kalmeshwar, Dist. Nagpur.
2. Roshan S/o. Daulatrao Bambal,  
Age: 33 Years, Occu. : Agriculturist,  
R/o. Ward No.2, Near Warthi Bridge,  
Tq. Kalmeshwar, Dist. Nagpur.
3. Anup Baliramji Ramtekkar,  
Age : 37 Years, Occu. : Private,  
R/o. Plot No.62, Near Matoshri Vidya Mandir,  
Dhanwantari Nagar, Ramna Maroti Road,  
Hanuman Nagar, Nagpur.

4. Chetan S/o. Baliramji Ramtekkar,  
Age : 35 Years, Occu. : Private,  
R/o. Plot No.62, Near Matoshri Vidya Mandir,  
Dhanwantari Nagar, Ramna Maroti Road,  
Hanuman Nagar, Nagpur.

.... Respondents

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Advocate for Petitioners : Mrs. S.K. Paunikar  
Advocate for Respondent Nos.1 & 2 : Mr. A.K. Neware  
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**CORAM : PRAFULLA S. KHUBALKAR, J.**

**Dated : 26<sup>th</sup> FEBRUARY 2026**

**JUDGMENT :**

1. Heard.
2. **Rule.** Rule is made returnable forthwith and by consent of learned Advocates appearing for the parties, the petition is taken up for final disposal.
3. By this petition, the petitioners have challenged an order dated 07.05.2025, passed by Special Court of Differently-abled Persons, Senior Citizen and Marginalized Section of Society, Nagpur, in Civil M.A. No.818 of 2023, rejecting the application for condonation of delay in filing the miscellaneous civil appeal.
4. The petitioners are the original defendants in Spl.C.S. No.208 of 2022, which is a suit for declaration, cancellation of sale-deed and permanent injunction. The temporary injunction application

filed by the plaintiffs at Exhibit 05 in the said suit is allowed by order dated 01.02.2023. Feeling aggrieved by this order, the petitioners filed a miscellaneous civil appeal before the Appellate Court accompanied with an application for condonation of delay of 169 days. The application for condonation of delay came to be rejected by order dated 07.05.2025 and the same is subjected to challenge by way of instant petition.

5. A perusal of the impugned order reveals that the Appellate Court has rejected the application for condonation of delay of 228 days and has observed that the reasons mentioned for condonation of delay about the conduct of earlier two Advocates and hospitalization of petitioner No.1 cannot be believed in absence of any document on record.

6. Learned Advocate for the petitioners submitted that the Appellate Court has failed to consider that the reasons mentioned in the application were sufficient. Further, she submitted that the Appellate Court has passed the impugned order after a period of about 08 to 09 months after the hearing was conducted on the delay application.

7. It is the submissions of the learned Advocate for the respondents that the application for condonation of delay does not

contain reasons demonstrating sufficient cause and the details of the Advocates, on account of whose conduct the delay occurred, are not mentioned and therefore, the reasons are unbelievable. He submitted that even the reason about hospitalization of petitioner No.1 in G.T. Padole Hospital cannot be a sufficient cause. There is no explanation about the delay, which occurred after the discharge of petitioner No.1. He submitted that the petitioners failed to give explanation to each day's delay and hence, the application is rightly rejected.

8. It has to be seen that the suit is filed by the plaintiffs seeking cancellation of sale-deed and permanent injunction, in which an order of temporary injunction is passed. The original defendants are entitled to raise a challenge to the order of temporary injunction, which is causing prejudice to their rights with respect to the suit property and as such, they are entitled for an opportunity to file the appeal. Although the application for condonation of delay mentioned the delay of 169 days, the Court has considered the delay to the extent of 228 days. Even if the period of delay is considered to be 228 days, it has to be noted that an opportunity to the parties to file the appeal is a valuable right and rejection of condonation of delay amounts to depriving the party to file the statutory appeal. The position of law is settled that the procedural law is handmaid of

justice and mere delay in filing the proceedings should not deprive a party from prosecuting the genuine claim. As such, rejection of the application for condonation of delay of 228 days only because the details about the earlier Advocates for causing delay in preferring appeal are not mentioned is a pedantic approach. It has to be noted that petitioner No.1 was hospitalized in G.T. Padole Hospital, about which there is no reason to disbelieve and the insistence of the respondents for each day's delay is also not a pragmatic approach.

9. It is crucial to note that the application for condonation of delay was filed on 20.10.2023 and the final order was passed on 07.05.2025. The contention of the learned Advocate for the petitioners that the order was passed after 08 to 09 months after the hearing was conducted is also sufficient warranting interference on that count.

10. In view of the entire factual and legal aspects, interest of justice demands that an opportunity needs to be given to the petitioners to file the appeal by condoning delay in filing miscellaneous civil appeal. At the same time, the respondents, who are likely to be put to some hardship, need to be properly compensated by awarding appropriate costs.

11. In view of the factual and legal aspects, the writ petition deserves to be allowed. Hence, following order is passed.

**ORDER**

- I) The writ petition is allowed.
- II) The order dated 07.05.2025, passed by Special Court of Differently-abled Persons, Senior Citizen and Marginalized Section of Society, Nagpur, in Civil M.A. No.818 of 2023, is quashed and set-aside.
- III) The application filed by the petitioners for condonation of delay in filing the appeal is allowed, subject to costs of Rs.7,000/- (Rupees Seven Thousand Only), to be paid by the petitioners to the respondents, within a period of four weeks from today.
- IV) No order as to costs.
- V) Rule is made absolute in the above terms.

**[ PRAFULLA S. KHUBALKAR ]**  
**JUDGE**

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