



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

CIVIL APPLICATION (CAO) No.1290 OF 2025
IN
FAMILY COURT APPEAL ST. No.25333 OF 2025

(Suyog s/o. Omprakash Mahalle Vs. Poonam w/o. Suyog Mahalle (Poonam d/o. Rajendra Deshmukh))

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

Court's or Judge's orders.

Mr. U.J. Deshpande, Advocate for Petitioner.
Mr. U.M. Aurangabadkar, Advocate for Respondent.

CORAM : **SMT. M.S. JAWALKAR AND**
NANDESH S. DESHPANDE, JJ.
CLOSED FOR ORDER : **27th MARCH, 2026.**
PRONOUNCEMENT OF ORDER : **07th APRIL, 2026.**

1. This is an application under Section 5 of the Limitation Act.
2. By this application, the applicant prays for condoning of delay of 268 days delay in preferring the appeal.
3. We have heard Mr. U.J. Deshmuk, learned counsel for the applicant and Mr. U.M. Aurangabadkar, learned counsel for the respondent.
4. Learned counsel for the applicant submits that the delay as caused in filing the appeal is due to the fact that the applicant-appellant was never served with the notice of the application. He submits that the Family Court proceeded ex parte on the wrong assumption that the notice was served upon the applicant. He submits that in fact the notice was served on the parents which was allegedly refused by the father

of the applicant. By taking us through the record, the learned counsel for the applicant submits that he was never personally served at his place of residence or through any other means. Furthermore, the applicant submits that he only became aware of the impugned order after institution of execution proceedings before the Civil Judge, Senior Division, Pusad through some of his acquaintances. He, therefore, immediately took steps to obtain a certified copy from the Family Court, Akola. After obtaining and going through the certified copy it was revealed that an order of handing over the articles i.e. Stridhan is passed against the applicant. By taking us through the bailiff report dated 4/4/2025 learned counsel for the applicant submits that bare perusal of the said report would reveal that it is not a valid service as contemplated under Order V of the Code of Civil Procedure. Thus, it is the submission of the counsel for the applicant that no opportunity was granted and there was no occasion for him to contest the proceedings. He, therefore, prays for condoning of delay of 268 days.

5. Per contra, learned counsel for the respondent non-applicant vehemently opposed the contentions advanced by the learned counsel for the applicant. He submits that another appeal bearing Family Court Appeal No.37 of 2002 challenging the legality of the judgment by the Family Court, Akola in Petition No.B-158/2018 is pending before this Court and in the said matter as well as in all the civil applications the applicant has shown to be resident of Pusad, Aparna Layout Datta Ward Papinwar Garden, Taluka Pusad, District Yavatmal. He further submits that the application is filed with an oblique motive and the applicant was well aware that such a proceedings of

handing over of Stridhan is pending before the Family Court. He submits that in spite of service of notice, the applicant chose to remain absent and allowed the matter to be proceeded ex parte. He, therefore, prays for rejection of the application.

6. We have appreciated the contentions of the learned counsel for the respective parties and also gone through the record. As can be seen from the judgment impugned, the trial Court has recorded a finding that the applicant i.e. husband has failed to appear. He has, therefore, relied on Summons at Exh.-9 and more particularly the endorsement thereon. We have perused the said endorsement. It only says that the appellant was not present and his father, namely, Omprakash who was present told the baillief that his power-of-attorney has come to an end and therefore he is not eligible to accept the said summons on behalf of the applicant. It is further stated in the baillief report that it was informed to the baillief that the appellant resides in foreign country. He, therefore, has refused to accept the same. It is thus clear that the notice of the proceedings was not served.

7. In light of these facts it can very well be said that there was no valid service within the meaning of Order V as the appellant was not present nor the father was his authorized agent as contemplated under Rule V. Therefore, the endorsement of the baillief on the summons cannot be said to be a valid service. It is thus clear that since there was no valid service there was no occasion for the applicant to defend the proceedings. It is more than well settled that consideration for condonation of delay need not be hyper technical and pragmatic approach has to be adopted while deciding the said

application. However, looking to the fact that there are multiple litigation between the parties, we are of the view that the equity can be balanced by imposing costs of Rs.25,000/- on the applicant for condoning the delay.

8. In that view of the matter, we pass the following order :

ORDER

(i) The civil application is allowed and the delay of 268 days caused in preferring the Family Court Appeal is condoned, subject to payment of costs of Rs.25,000/-.

(ii) The costs to be paid to the respondent within three weeks from the date of this order and affidavit in that regard should be filed after compliance.

(iii) It is made clear that, if the cost is not paid within the stipulated time, the application would be rejected automatically without reference to the Court.

(iv) The application is disposed of accordingly.

(NANDESH S. DESHPANDE, J.)

(SMT. M.S. JAWALKAR, J.)