

MHKO080006682022

**ORDER BELOW EXH.1 IN CRI. M. A. NO.50/2022.***[Mahadev Shankar Kumbhar Vs. Smt. Akkatai Krushna Kumbhar]*

1. Present application is filed under Section 5 of the Indian Limitation Act to condone the delay to file the revision.
2. Learned advocate for the petitioner submitted that respondent is biological mother of revision petitioner. The petitioner was given in adoption to his uncle namely Shankar Kumbhar and therefore, the respondent has no right over the petitioner. In spite of it, she filed Cri. Misc. Application No. 61/2021 for maintenance under section 125 of the Code of Criminal Procedure. The notice was issued on the name of the petitioner on his biological father's name. Actually, the petitioner representing himself as 'Mahadev Shankar Kumbhar' but notice was issued as 'Mahadev Krushna Kumbhar'. The postman was hands in gloves with the respondent, hence he gave remark that 'this petitioner refused to take notice'. Due to said remark, the matter proceeded ex-parte against petitioner. When the petitioner got a notice about execution of order, he came to know about passing of order. Therefore, delay of one month caused to file the revision. Hence, the application may be allowed.
3. The learned advocate for the respondent submitted that the respondent created false document about adoption. Actually, said adoption is void. The petitioner and the respondent is residing in the same house. Since childhood the respondent maintained the petitioner. She gave

education to the petitioner. Actually, he made the story of adoption to grab the property. He received all the property. Hence, notice was properly served to the petitioner. Therefore, delay caused to file the revision is intentional. Hence, the application may be dismissed.

4. On perusal of record, it finds that, Cri. Misc. Application No. 61/2021 was decided by the learned Civil Judge Junior Division, Gadhinglaj after passing ex-parte order against the respondent. No doubt that as per post office report, this revision petitioner is refused to take the notice but in the interest of justice, he is entitled to contest the matter on merit. Hence, reasonable opportunity is required to be given to the petitioner. Also the petitioner submitting that he is not the son of respondent but he was already given in adoption. It is the case of respondent that said adoption is void. It shows that, matter is required to be decided on merit. As the application was decided ex-parte, therefore, he was not knowing about the date of decision. So, there may be chances that delay caused to the revision. Hence, delay is not intentional. If the petition is allowed and the petitioner is granted an opportunity to file the revision, it may cause loss to the respondent. She filed application for maintenance and therefore, the petitioner is liable to deposit certain amount under protest. Hence, the following order is passed.

ORDER

- 1) The application is allowed.
- 2) The delay to file revision is condoned subject to condition that petitioner shall deposit Rs.15,000/- (Rupees Fifteen Thousand only) on or before 07/01/2023. The said amount would remain in Court

till decision of interim application in revision filed by petitioner.

- 3) If the applicant failed to deposit the amount on or before 07/01/2023, the application shall be treated as dismissed.
- 4) Office is directed to register the revision.
- 5) Record and proceeding be remitted back to the trial Court, if any.

Date: 15-12-2022

(Onkar R. Deshmukh)
Additional Sessions Judge,
Gadhinglaj.