

MHAU170006962025

**Civil M.A.No 15/2025**

Nandabai Laxman Magare & Ors.

Vs.

Devidas Suryabhan Gund

**IN THE COURT OF DISTRICT JUDGE-1, PAITHAN,
DIST. AURANGABAD.****ORDER BELOW EXH.01**

- 1] This is an application for condonation of delay of 5 years 4 months and 26 days in filing an appeal.
- 2] The non-applicants opposed the application by filing say and prayed to reject the same.
- 3] Heard learned counsel for applicants and non-applicant. Perused the record. It is the submission of learned counsel for the applicants that there is no intentional delay on the part of applicants and therefore, the same may be condoned and appeal be registered.
- 4] As per Section 5 of Limitation Act, the court needs to see whether the applicant satisfy the court that he had sufficient cause for non-preferred the appeal or making application within prescribed period. The Hon'ble Supreme Court in the case of **Collector, Land Acquisition, Anantnag and Another Versus Mst. Katiji and others,(1987)SCC 107**, has interpreted the provisions of Section 5 of Limitation act and has observed:

“The legislature has conferred the power to condone delay by enacting Section 5 of the Indian Limitation Act of 1963 in order to

enable the courts to do substantial justice to parties by disposing of matters on “merits”. The expression “sufficient cause” employed by the legislature is adequately elastic to enable the courts to apply the law in a meaningful manner which sub-serves the ends of justice- that being the life purpose for the existence of the institution of courts. It is common knowledge that this court has been making a justifiably liberal approach in matters instituted in this Court. But the message does not appear to have percolated down to all the other courts in the hierarchy. And such a liberal approach is adopted on principle as it is realized that :

1. Ordinarily a litigant does not stand to benefit by lodging an appeal late.

2. Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this when delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties.

3. “ Every day's delay must be explained” does not mean that a pedantic approach should be made. Why not every hour's delay, every second's delay? The doctrine must be applied in a rational common sense pragmatic manner.

4. When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay.

5. There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of malafides. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk.

6. It must be grasped that judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so.”

5] In view of above observations of the Hon'ble Supreme Court, the present application needs to be decided. In the case in hand, the applicants are claiming that their advocate did not inform them about the passing of judgment and decree and therefore, they could not prefer the appeal within the period of limitation. If the statement of applicants is accepted to be true, then the delay occurred in preferring the shall have to be condoned. There is nothing on record which would falsify the statement of applicant. Even otherwise, I do not find any reason to disbelieve the statement of applicants as they were not going to be benefited by not filing the appeal within statutory period. It is well settled law that a party cannot be made to suffer due to fault of their advocate. Hence, the delay in preferring the appeal deserves to be condoned. Non-applicant can be compensated in terms of money for the delay caused in preferring the appeal. I, therefore, proceed to pass the following order.

ORDER

- 01] Application Exh.01 is allowed subject to cost of Rs. 5,000/- (Rs. Five Thousand only) to be paid to non-applicant by the applicants.
- 02] On payment of afore-said cost, delay of 5 years 4 months and 26 days in preferring appeal shall be deemed to have been condoned and appeal shall be registered.
- 03] Application is accordingly disposed off.

Date: 02.05.2026

(R.D.Gadwe)
District Judge-1
Paithan