

ORDER BELOW EXH. 1 CIVIL MISC. (DELAY) APPLN.NO. 50/2022
(CNR No.MHST-07000987-2022.)

Tatoba Dhondi Lohar through LR's	---	Applicants.
Vs..		
Pradiap Narayan Joshi & others	---	Opponents.

By this application, the applicant seeks condonation of delay of 45 months i.e., 3 years and 9 months occasioned in preferring application for restoration of the suit. My ld. predecessor dismissed the suit due to absence of the plaintiff by passing order, dated 17/04/2018, in R.C.S. No.417/2011. The application ought to be filed till 16/05/2018. However, the applicant cannot filed the application for the restoration of the suit within the same time. The reasons stated by the applicant are as follows:

2. The proceedings of the suit were being looked after by Plaintiff No. 1, Tatoba Dhondi Lohar. As Plaintiff No. 1 suffered from paralysis, he was unable to meet the advocate while the suit inquiry was in progress. Thereafter, Plaintiff No. 1 expired on 12/09/2016. Applicants No. 2 to 4 are engaged in the masonry business and therefore remain out of town for work. Further, since March 2019, due to the COVID pandemic, the applicants could not attend the court and that the decision of said petition did not came to know to the applicant within time and hence said delay occasioned in preferring appeal.

Defence of Opponents :-

3. The opponents No. 2 and 3 filed say at Exh. 24 and resisted the application. The opponents No. 4 to 10 failed to appear

before the Court in spite of service of the notice. Therefore, the application proceeded *Ex-parte* against them by passing order below Exh. 1 on 13/10/2022 and matter is proceeded without say of the opponent No. 1.

4. Said application is resisted by opponents No. 2 and 3 on the ground that, the applicant has not provided proper reasons. The conduct of the applicant is negligent. No documentary proof is filed on record. Delay is not properly explained. The suit is dismissed due to the negligence of the plaintiff. Therefore, as the application is filed to harass the opponents, it be rejected.

5. Upon above facts, the following only point, together with my finding, emerges for the determination :

Point	Finding
Whether there are good and sufficient grounds to condone the delay of 45 months occasioned in preferring restoration application ?	Yes.

REASONS

6. Heard the learned Advocates for both sides. I have also perused the oral and documentary evidence placed on record.

7. The applicants have relied upon the oral evidence of Applicant No. 1B, Anna Tatoba Lohar (AW-1), who has filed his affidavit in lieu of examination-in-chief at Exh. 19. The applicants have further relied upon the oral evidence of Dattatraya Dhondiram Dole (AW-2), who has filed his affidavit in lieu of examination-in-

chief at Exh. 26.

8. The applicants have also produced on record the death certificate of the original Plaintiff No. 1, Tatoba Dhondi Lohar, at Exh. 7; the death certificate of Kalavati Tatoba Lohar, wife of the original Plaintiff No. 1, at Exh. 8; and the death certificate of Janaki Udhav Lohar, Applicant No. 1C, at Exh. 9. In addition thereto, the applicants have relied upon certain medical documents in support of their case.

9. On the other hand, the opponents have not adduced any oral or documentary evidence.

10. Upon perusal of the testimony of Applicant No. 1B (AW-1) at Exh. 19, it reveals that he has specifically deposed that the proceedings of the suit were being looked after by his father, Tatoba Dhondi Lohar. According to him, his father suffered from paralysis and remained bedridden prior to his death on 12/09/2016. Consequently, he was unable to meet the advocate and effectively pursue the proceedings. He has further stated that Applicants No. 2 to 4 are engaged in masonry work and, therefore, frequently remain out of town for employment. It is also deposed that, due to the COVID-19 pandemic, the applicants could not attend the Court and were unaware of the dismissal of the suit within the prescribed period.

11. Dattatraya Dhondiram Dole (AW-2) has corroborated the testimony of AW-1. He has deposed that Tatoba Dhondi Lohar had been suffering from paralysis for about two years prior to his death. He has further stated that Applicant No. 1A was affected by COVID-

19 and that the remaining applicants were engaged in masonry work outside the village.

12. During the cross-examination of both witnesses, nothing substantial has been elicited to discredit their testimony. Their evidence has remained unshaken on material particulars. Further, from the document produced at Exh. 28/1, it appears that the learned Advocate for the original plaintiff had filed an application seeking adjournment on the date when the suit came to be dismissed. The said application was rejected by the Court, and consequently, the suit was dismissed for default on 17/04/2018. The application for adjournment itself mentions the illness of the plaintiff. This circumstance indicates that, although the plaintiff was personally absent, the matter was being diligently pursued through his advocate.

13. Moreover, the oral evidence of the applicants finds support from the documentary evidence produced on record. Considering the cumulative effect of the aforesaid circumstances, the reasons assigned by the applicants appear to constitute sufficient cause for condoning the delay occasioned in filing the present application for restoration of the suit.

14. The applicant has relied upon the following authority:
Sreedhara Kurup v. Mickel, 1968 GoJuris (Kerala High Court) 134.

In the said case, it was held that: *"The petitioner filed an application for restoration of the suit on the ground that, on the date fixed for trial, he was ill and, therefore, could not attend the Court."*

The aforesaid authority supports the case of the

applicant. Accordingly, due consideration has been given to the ratio laid down therein while deciding the present application.

15. The opponents have relied upon the following authorities:

- i. **Marutrao Shivaram Patil and Others v. Jaysing Baburao Kadam and Others, Second Appeal (ST) No. 18866 of 2019, decided on 18/11/2024 by the Hon'ble Bombay High Court.**
- ii. **Brijesh Kumar and Others v. State of Haryana and Others, Special Leave Petition (Civil) Nos. 6609–6613 of 2014, decided by the Hon'ble Supreme Court.**
- iii. **Majji Sannemma @ Sanyasirao v. Reddy Sridevi and Others, 2022 (2) Mh.L.J. (S.C.).**
- iv. **Dnyaneshwar Vishwanath Borade v. Shri Saibaba Sanstha Vishwastha Vyavastha, Shirdi, Ahmednagar, 2020 (6) Mh.L.J.**
- v. **Sujata L. Hansaria v. Manohar, AIR Online 1995 SC 647.**

I have carefully considered the ratio laid down in the aforesaid authorities. However, the facts and circumstances of the cases cited by the opponents are materially different from those of the present case. The said authorities are, therefore, distinguishable on facts and do not advance the case of the opponents.

16. In view of pronouncement in *Sonerao Sadashivrao Patil & others Vs. Godavaribai Laxmansing Gahirewar & others, 2000(1) Mh.L.R. 182*, wherein certain guidelines have been laid down while dealing with the application under Section 5 of the Act. The following guidelines should be borne in mind while interpreting the concept of sufficient cause :

- (1) Litigant does not stand benefited by lodging an appeal late;*
- (2) Refusal to condone may result in meritorious matters being thrown out at the very threshold and the cause of justice being defeated.*
- (3) In the matter of explanation of every day's delay, pedantic approach should be avoided. Rational common sense pragmatic approach should be invariably adopted ;*
- (4) Substantial justice is to be preferred against technical flaws;*
- (5) There is no presumption that delay is always deliberate;*
- (6) Injustice is to be removed.*

17. In my view, the Courts should not lose sight of the fact that by not taking steps within the time prescribed a valuable right accrues to the other party which cannot be lightly defeated by condoning the delay in a routine manner. Sufficient cause has to be considered with pragmatism and with justice oriented approach, but any cause whatsoever cannot be construed as a sufficient cause and it is necessary to apply the mind to the cause shown and to justify the said causes and to find out whether they are sufficient or not. I am conscious that expression “sufficient cause” is liberally construed it does not mean that the court should readily accept whatever the party has to explain his default.

18. Considering the nature of dispute, in my view, the applicant should not be deprived of her legitimate right to prefer appeal against the Judgment and order passed against her. In view of above, by endorsing my finding against above point in the affirmative, I pass the following order :

ORDER

1. Application is allowed.
2. Delay occasioned in preferring Restoration Application is condoned subject to payment of costs of Rs.2,000/- (Rupees Two Thousand Only), to opponents No. 2 and 3.
3. Restoration Application be registered after costs compliance.

Place :- Karad.

Date :- 16/06/2026.

(Smt. A.V. Mohite)

2nd Jt. Civil Judge (Jr. Div.), Karad.

Tal. Karad, Dist. Satara.