



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

WRIT PETITION NO. 1085 OF 2022

(DAYALAL PRABHULAL VYAS..VS.. DHANRAJ RAMBHAU KHANORKAR & OTH.)

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

Court's or Judge's orders

Shri Anand Deshpande, Advocate for Petitioner.
Shri N.D.Khamborkar, Advocate for Respondent No.2.

CORAM : ANIL S. KILOR, J.
DATED : OCTOBER 31, 2023.

1. Heard.
2. The order dated 01/09/2021 rejecting the application for condonation of delay in filing the appeal challenging the order rejecting the application for condonation of delay in filing the application for restoration, is under challenge in this writ petition.
3. The respondent filed a suit for partition and separate possession which was dismissed in default. While applying for restoration there was delay of 60 days in filing such application. The said application came to be rejected against which the appeal was preferred. However, the appeal was again filed at a belated stage and therefore, an application for condonation of delay was filed, which was registered as Misc.Civil Application No.51 of 2019. There was a delay of 9 months and 6 days in filing the appeal, which came to be condoned by the lower appellate Court on finding the explanation offered by the respondent as satisfactory.

4. After going through the impugned order and the reasoning recorded by the lower appellate Court, I do not find any perversity or illegality committed by the learned lower appellate Court, particularly in light of the judgment of the Hon'ble Supreme Court of India in the case of *Esha Bhattacharjee ..vs..Raghunathpur Nafar Academy*, reported in **(2013)12 SCC 649**.

5. In that view of the matter, as I do not find any merit in the present writ petition, the writ petition is **dismissed**. No order as to costs.

However, considering the nature of the dispute and the fact that the suit is pending since 1996, the learned lower appellate Court is directed to decide the appeal expeditiously and in any case before **31st January 2024**.

JUDGE