

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY.
CIVIL APPELLATE JURISDICTION.**

**CIVIL APPLICATION NO. 557 OF 2015
IN
APPEAL FROM ORDER (ST.) NO. 8666 OF 2015**

Smt. Sushiladevi Shivilal Singh & Anr.	... Applicants
V/s.	
Vijaylaxmi Vinodkumar Singh & Ors.	... Respondents

Mr. R.D. Suryawanshi for the applicants.	

**CORAM : K. K. TATED, J.
DATED : 16/06/2015.**

PC.:

. Heard learned Counsel for the applicants.

2 This application is preferred by the defendants for condonation of 2 years and 232 days delay in filing Appeal from Order challenging the order dated 19.06.2012 passed by the Bombay City Civil Court at Bombay in Chamber Summons No. 1095 of 2010 in Short Cause Suit No. 2908 of 1988 in execution proceeding.

3 The learned Counsel for the applicants submits that applicants being ladies, they do not have knowledge about the procedure to take appropriate steps. He submits that when the order passed by the Trial Court dated 19.06.2012, the applicants' Advocate informed them that the order is in their favour and it is not necessary to challenge the same in the High Court. He submits that thereafter, the respondents plaintiffs preferred Appeal from Order challenging the impugned order

dated 19.06.2012 by which the Trial Court rejected the plaintiffs' application for appointment of Court Receiver. That Appeal from Order was decided by this Court (Coram : Mrs. Roshan Dalvi, J) on 29.07.2013. He submits that pursuant to the order dated 19.06.2012 in Chamber Summons No. 1095 of 2010, the Trial Court appointed the Commissioner to hold inquiry to ascertain annual income of the joint family of the plaintiffs' and defendants' from the year 1988. He submits that the said Commissioner started inquire. During the said inquiry, the applicant advised by her Advocate that it is necessary for her to challenge the order dated 19.06.2012, which is contrary to law. He submits that though the plaintiffs in S.C. Suit No.2908 of 1988 failed to claim mesne profit, the Trial Court appointed Commissioner to hold inquiry. Thereafter, the applicants approached their earlier Advocate to take immediate steps for filing the present Appeal from Order. The earlier Advocate refused to file Appeal from Order. Not only that the earlier Advocate refused to hand over certified copy and papers to the applicants. Hence, there is a delay in preferring the above mentioned Appeal from Order.

4 In support of these contentions, the learned Counsel for the applicants relies on paragraph 2, 5 and 6 of the Civil Application. He submits that the applicants have good chance of success in the present proceeding. He submits that in the interest of justice, this Hon'ble Court be pleased to condone the delay in preferring the present Appeal from Order. He submits that if delay is not condoned, irreparable loss and injury will be caused to the applicants. He submits that because of mistake on the part of the Advocate, litigants should not be suffered.

On the basis of these submissions, the learned Counsel for the applicants submits that the Civil Application may be allowed and matter to be heard on its own merits.

5 I heard the learned Counsel for the applicants at length. It is to be noted that in the present proceeding, there is delay of more than 2 years and 232 days in preferring Appeal from Order. The record shows that applicants applied for certified copy on 17.01.2015. The same was ready on 20.01.2015 and thereafter, collected by the applicants. In the entire Civil Application, there is no explanation why the applicants took more than 2 & ½ years for applying certified copy.

6 In the present proceeding, the respondents plaintiffs filed Appeal from Order no. 33 of 2013 challenging the impugned order dated 19.06.2012 by which the plaintiffs' prayer for appointment of Court Receiver was rejected. In that Appeal from Order, the applicants appointed two Advocates, which itself shows that applicants have knowledge about the order and consequences. In spite of that, applicants have not taken appropriate steps to file Appeal from Order. In the entire Civil Application, applicants have not disclosed the name of the Advocate, who refused to handover the papers to the applicants. The reasons disclosed by the applicants in paragraph nos. 2, 5 and 6 do not justify to condone the delay of more than 2 & ½ years in preferring present Appeal from Order. Not only that the Commissioner has already started his work.

7 The Apex Court in the matter of **Damodar Pillai Vs. South Indian Bank Ltd, 2005(5) All.M.R. 961 (SC)** held that hardship or

injustice is not a ground for extending the period of limitation.

8 The Apex Court in the matter of **Pundlik Jalam Patil Vs. Ex.Engg. Jalgaon Medium Project and Ors, 2008(6) BCR 513** held that unless and until sufficient cause is shown, inordinate delay should not be condoned.

9 The Apex Court in the matter of **Commissioner, Nagar Parishad, Bhilwara Vs. Labour Court, Bhilwara & Anr, 2009(3) SCC pg 525** held that while dismissing an Appeal on the ground of limitation, going into the merits of the case is not allowed.

10 The Apex Court in the matter of **Oriental Aroma Chemical Industries Limited Vs. Gujarat Industrial Development Corporation reported in 2010 (5) SCC 459**, held that in the absence of sufficient cause, Court should not condone the delay.

11 The Apex Court in the case of **B. Madhuri Gaud Vs. B. Damodar Reddy, 2012 (12) SCC 693** held that if sufficient cause is not shown, delay should not be condoned.

12 The Apex Court in the matter of **Esha Bhattacharjee Vs. Managing Committee of Raghunathpur Nafar Academy 2013(12) S.C 450** held that if sufficient cause is not shown, application for condonation of delay is rejected.

13 Considering the facts as stated hereinabove, and the law declared

by the Apex Court, I am of the opinion that applicant has failed to show sufficient cause for condonation of 2 years and 232 days delay in preferring the Appeal from Order.

14 Hence, Civil Application stands rejected.

15 In view of rejection of Civil Application, nothing survives in Appeal from Order. Hence, registration of Appeal from Order stands rejected.

(K.K.TATED, J.)