

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

**CIVIL APPLICATION NO.1423 OF 2015
IN
FIRST APPEAL (ST). NO.9496 OF 2015**

Mr.Rajiv M. Morzaria .. Applicant

vs.

Mr.Mathuradas G. Morzaria and Ors. .. Respondents

Mr.Sushil Upadhyay i/b Mr.A.M.Saraogi for the applicant

**CORAM : K.K.TATED, J.
DATED : 09/04/2015**

PC:

1 Not on board. At the request of the learned counsel for the applicant, matter is taken on board for urgent orders.

2 This application is preferred by plaintiff for condonation of 4 years and 290 days delay in filing First Appeal challenging the judgment and decree dated 11.3.2010 passed by Bombay City Civil Court at Bombay in Suit No.2121 of 2007.

3 The learned counsel for the applicant submits that as soon as the judgment and decree passed by Trial Court they immediately applied for certified copy on 19.11.2013. Same was ready for delivery on 5.7.2014. Thereafter they filed First Appeal in this court on 1.4.2015.

4 The learned counsel for the applicant submits that because of financial difficulty it remained on the part of the applicant to take immediate steps for filing the matter in this court. He further submits that respondent no.1 also filed proceedings under the provisions of Domestic Violence for harassing the applicant. Hence, there is a delay in filing First Appeal in this court. He further submits that at the same time applicant was not keeping well and he was bed ridden for various reasons and therefore there is a delay in preferring the present First Appeal. In support of this contention, the learned counsel for the applicant relied on paragraph 3 and 4 of the Civil Application which reads thus:

“3. The applicant states that though, somehow, the Applicant had manage to obtain the certified copy by spending some amounts however, thereafter, the Applicant had no money to engage any Advocate for the purpose of filing First Appeal. The Applicant states that at the same time, the Applicant was also sought to be harassed by the Respondent No.1 by filing necessary proceedings under the provisions of Domestic Violence Act.

4. The Applicant states that the Applicant was otherwise also bed ridden for various reasons and had been mentally disturbed and was unable to take any decision. The Applicant states that only because of the aforesaid reasons, despite the certified copies being made available in the month of July, 2014, the Applicant could not file the First Appeal before this Hon'ble Court.”

5 On the basis of these submissions and the reasons disclosed in para 3 and 4 of the Civil Application, advocate for the applicant submits that in the interest of justice this Hon'ble Court be pleased to condone the delay in filing First Appeal. He submits that if delay is not condoned, irreparable loss and injury will be caused to the applicant. He submits that applicant has good chance of success in the present proceeding.

6 I have heard the learned counsel for the applicant.

7 It is to be noted that the reason disclosed by the applicant about financial difficulty, filing of proceeding under the provisions of Domestic Violence Act by the respondent no.1 cannot be considered as sufficient reason for condonation of delay. Not only that applicant has not placed on record any documentary proof about being bed ridden for various reasons as disclosed in paragraph 4 of the Civil Application.

8 Our High Court in the matter of **Laxman Divekar Vs. State of Maharashtra 1998 (1) Mh.L.J 745** held that Court has no power to arbitrarily condone the delay in the name of advancing substantial justice just because the applicant happen to be a Corporation.

9 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.

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 Recently, 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 be rejected.

13 Considering the reasons disclosed by the applicant in Civil Application and the law declared by the Apex Court, I do not find any substance in the present Civil Application. Hence, same is rejected.

14 In view thereof, First Appeal (ST). No.9496 of 2015 and Civil Application No.1424 of 2015 for stay does not survive. The same are also dismissed as infructuous.

(K.K.TATED, J.)