

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.5572 OF 2014**

Poonam Ram Sabunani

..Petitioner

Vs.

Mohan Pritamdas Gera & Anr.

..Respondents

Mr. S. S. Kanetkar for the Petitioner

CORAM : R. M. SAVANT, J.

DATE : 27th AUGUST, 2015

P.C.

1 The order dated 4-1-2014 passed by the Learned District Judge-3, Pune, by which order the delay of 114 days in filing the Misc Civil Appeal against the order dated 7-12-2012, allowing the application Exhibit 5 filed by the Petitioner/Plaintiff was condoned, is taken exception to by way of the above Petition.

2 Two reasons which have been mentioned in the application seeking condonation namely that some time was lost in obtaining the opinion of Advocates as regards the filing of the Appeal and the second ground being that the power of attorney of the Applicant Anita Shekhar could not take prompt steps as she has to take care of ailing mother as also the reason that the Applicant was out of station for his personal reason, commended acceptance to the Lower Appellate Court who accordingly condoned the said delay of 114

days.

2 The contention of the Learned Counsel appearing on behalf of the Petitioner herein i.e. the Respondent in the Appeal that on account of the supervening event of the death of the mother of the Applicant who had life time interest in the property and who in her life time had relinquished her life time interest in favour of her daughter, the Suit itself has turned infructuous, was not accepted by the Lower Appellate Court, as the Lower Appellate Court was of the view that the same cannot be a consideration whilst adjudicating whether the delay is required to be condoned or not and that is a contention which would be available to the Petitioner in the Appeal.

3 In my view, since the Lower Appellate Court has deemed it appropriate to exercise the discretion in favour of the Applicants/Respondents this Court does not deemed it appropriate to interfere with the said discretion. The Writ Petition is accordingly dismissed.

[R.M.SAVANT, J]