

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

CIVIL APPLICATION NO.101 OF 2015

Bhavesh Vrajlal Mehta and anr.

..Applicants.

Vs.

Mr. Sanjay Bijayraj Bhandari and ors.

..Respondents

Mr. C. R. Sadasivam, Advocate for applicant No.1.

Mr. P. S. Dani Senior Advocate a/w Ms. Yasmin Bhansali i/by
Yasmin Bhansali & Co., Advocate for the respondent No.1.

Coram : Smt. R. P. SondurBaldota, J.

Date : 24th August, 2015.

P.C. :

1. This civil application is taken out for condonation of delay in filing the petition for review of the order dated 29th April, 2014, by which the Appeal From Order preferred by respondents No.1 and 2, was disposed off. The applicants had then approached the Apex Court to challenge the order by preferring Special Leave to Appeal (C) No.1598 of 2014. By its order dated 25th July, 2014 the Apex Court refused to interfere with the order and dismissed the special leave petition observing that there is no legal and valid ground for interference. Thereafter, the applicants have approached this Court by way of review. Applicants contend that the delay in preferring the review petition is caused because of the special leave petition filed by them in the Apex Court.

2. The time taken to challenge an order in the higher forum can never be set up as a sufficient cause for condonation of the delay. It is a remedy lawfully and rightfully available to a litigant. Having consciously resorted to the same, the time taken for it cannot be excluded from the period of limitation. This is apart from the position that having challenged the order under review before the higher forum on all the grounds, maintainability of the review petition is debatable. Since, there is no case made out for condonation of the delay, the civil application is dismissed.

3. In view of dismissal of the civil application for condonation of the delay, the review petition cannot survive. The same is accordingly dismissed.

[Smt. R. P. SondurBaldota, J.]