

Sequeira

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

CIVIL APPLICATION NO. 657 OF 2013

(For condonation of delay)

in

SECOND APPEAL (St.) NO. 12304 OF 2013

Along with

CIVIL APPLICATION NO. 658 OF 2013

Shri Indramal Dharamchandji Chouhan

Deceased through Legal Heirs / Representatives

1) Smt.Kamaladevi Indramal Chouhan (deceased)

2) Sou. Chandan Abhaykumar Shaha & ors.

... Applicants /
Appellants.

V/s.

Shri Ashok Bala Sawant & ors.

... Respondents.

Mr.Manoj Patil, for Applicants in both C.A. and Appellants.

Mr.G.M.Savagave, for Respondent Nos.1 to 3.

Mr.Ashish Pawar, for Respondent Nos.4 to 6.

***CORAM : N.M. Jamdar, J.
Friday 15 April, 2016.***

P.C. :-

By this Civil Application the Applicants pray that the delay of 113 days in filing the Second Appeal be condoned.

2. The reasons given by the Applicants for delay is that the Applicant is a sole earning member of his family and has to visit various places for business purpose. Since February 2013, the Applicant was in Hyderabad

after the bomb explosion, looking after the business. He has given details of various legal proceedings which the advocate for the Applicants attending at Delhi and other places, and in the circumstances there was a delay of 113 days.

3. The learned counsel for the Respondents opposed the Civil Application. He submitted that the Second Appeal bearing Stamp No.12295 of 2013 was also filed which is similar to the present appeal and both the Appeals were heard together in the District Court. He submitted that the Civil Application No.709 of 2013 taken out in that Appeal, this Court has rejected the Application. He submitted that the reasons given in the said Application and the present Application are the same.

4. I have considered the rival contentions. The reasons given by this Court while dismissing the Civil Application No.709 of 2013, which was affirmed by the present Applicant as a Power of Attorney holder of the owner therein i.e. Gulabchand Hanjarimal Khandelwal, were difficulties of Power of attorney holder and nothing stopped the Applicant i.e. the original owner from approaching this Court earlier. This Court while disposing the Civil Application No.709 of 2013 has not commented upon the merits of the reason given. The present application is not filed through any Power of attorney but the Applicant himself as the owner. The Applicant was Power of Attorney holder in the other Appeal. Therefore, the order passed on 13 December 2013 rejecting Civil Application No.709 of 2013 will not come in the way of the Applicant to

consider the present application on its own merits. The delay of 113 days for the reasons stated in the application, is liable to be condoned. Order accordingly.

5. Civil Application is accordingly allowed in terms of prayer clause (a), (b). However, to balance the equities, the Applicant shall pay costs of ₹ 10,000 to the Respondents within period of two weeks from today. After the cost is so paid and all office objections are removed, place the Appeal on board for admission as per its C.M.I.S date.

(N.M.Jamdar, J.)