

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

**CIVIL APPLICATION NO.223 OF 2016
IN
REVISION PETITION (STAMP) NO.5814 OF 2016
IN
CIVIL REVISION APPLICATION NO.596 OF 2013**

Shripal Chunilal Choudhary	..Applicant
Versus	
Ajay Dalsukhlal Goradia and another	..Respondents

**Shri. Dipesh Siroya for the Applicant.
Shri. Ashwin R. Rana for the Respondents.**

**CORAM : R. M. SAVANT, J.
DATE : 25th OCTOBER, 2016**

PC.

1 The above Civil Application has been filed seeking condonation of delay of 65 days in filing the above Review Petition. The reasons for the said delay have been mentioned in paragraphs 3 and 5 of the Civil Application which have now been sought to be supplemented by the affidavit filed by the Petitioner in rejoinder to the affidavit in reply filed by the Respondents herein. The sum and substance of the reasons as can be culled out, are to the effect that after obtaining certified copy of the order, on account of family functions, out of station trips and business activities, the Applicant i.e. the Review Petitioner could not contact his advocate and therefore could not file the Review Petition within time.

The reasons as originally mentioned in the above Civil Application have been questioned on behalf of the Respondents by filing an affidavit in reply. It is the case of the Respondents that the said reasons as appearing in the Civil Application can hardly justify even the delay to the extent of 65 days in filing the Review Petition.

2 It is required to be noted that Review is sought of the order dated 17.11.2015 passed by this Court whereby the above Civil Revision Application came to be dismissed. The order passed by this Court was available on the website from 21.11.2015 onwards and in fact the Review Petitioner has stated that he has downloaded the order from the website immediately thereafter. It is required to be noted that the Applicant i.e. the Review Petitioner has forwarded a cheque for Rs.43,961.17 ps. to the Respondent for the period February 2015 till date of notice vide his letter dated 31.12.2015. Hence in so far as the order passed by the Appellate Bench of the Small Causes Court as confirmed by this Court by order dated 17.11.2015 passed in the above Civil Revision Application, the same has been complied with by the Applicant/Review Petitioner on 31.12.2015. It is thereafter on 19.01.2015 that an application for certified copy came to be made by the Applicant/Review Petitioner and thereafter the instant Review Petition came to be filed on 22.02.2016 resulting in the delay of 65 days in filing the same. Though it is well

settled that in matters of condonation of delay a highly technical and pedantic approach should be eschewed. The fact remains that the delay can only be condoned if the reasons for the same are justifiable. The said dictum would have to be considered in the context of the facts of the present case wherein as indicated above, on 31.12.2015 the Petitioner has forwarded the cheque for the sum of Rs.43,961.17 ps. in compliance of the order passed by the Appellate Bench of the Small Causes Court as confirmed by this Court. Hence the Applicant was very well aware of the said order dated 17.11.2015. If considered in the said context, the reasons advanced for seeking condonation of delay of 65 days do not inspire confidence. Hence no discretion can be exercised in favour of the Applicant/Review Petitioner.

3 It is required to be noted that the review of the order dated 17.11.2015 is sought on the ground that certain material facts have not been taken into consideration by the Appellate Bench of the Small Causes Court. In the order dated 17.11.2015 it has been observed by this Court that the Appellate Court has carried out an elaborate exercise prior to modifying the standard rent fixed by the Trial Court as also permitted increases and repair-cess. The instant Review Petition is therefore filed just to keep the issue alive. Hence on merits also this Court does not find any ground made out which would come within the ambit of Order 47 of

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the Code of Civil Procedure. Hence no case for condonation of delay is made out on the said ground also. The Civil Application is accordingly rejected.

[R.M.SAVANT, J]