

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 7004 OF 2015**

Mr. Janu Dhumade)
age about 59, occupation Retired)
Indian Inhabitant of Mumbai)
residing at Janu Dumale Chawl)
Akurli Road, Janu Pada, Kandivali)
East, Mumbai 400 101) ..Petitioner

Vs.

Mr. Sakharam Dhaktu Gurav)
Aged about 40 Occupation service)
Indian Inhabitant residing at Janu)
Dhumade Chawl, Room No.2, Janu)
Pada Akurli Road, Kandivali East)
Mumbai 400 101)
(Since Deceased) through LRs)

1(a) Mrs. Parvati Sakharam Gurav)
Aged 70 years Occ Household)

1(b) Mr. Ashok Sakharam Gurav)
Aged 50 years Occ Service)

1(c) Mr. Chandrakant S Gurav)
Aged 45 years Occ Service)

1(d) Mrs Vimal Sakharam Gurav)
Aged 43 years Occ Household)

1(e) Mrs. Mangal Sakharam Gurav)
Aged 40 years Occ Household)

1(f) Mrs. Kunda Sakharam Gurav)
Aged 30 years Occ Household)

1(g) Mrs.Alka Sakharam Gurav)
Aged 25 years Occ Household)

All residing at Room No.2)
Janu Dumadle Chawl, Janu Pada)
Akurli Road, Kandivali)
East, Mumbai 400 101) ..Respondents

Mr. A. P. Deshmukh for the Petitioner
Mr. Ankur Shah i/b Mr. K. V. Desai for the Respondents

CORAM : R. M. SAVANT, J.
DATE : 10th FEBRUARY, 2016

ORAL JUDGMENT

1 Rule. Considering the nature of the challenge raised, made returnable forthwith and heard.

2 The Writ Jurisdiction under Article 227 of the Constitution of India of this Court is invoked against the order dated 25-11-2014 passed by the Appellate Bench of the Small Causes Court, by which order, the Marji Application filed by the Petitioner being No. 41 of 2014, for condonation of delay in filing the Appeal came to be rejected.

3 It is not necessary to burden this order with unnecessary details considering the nature of the final order to be passed. Suffice it would be to state that a part decree has been passed by the Learned Judge of the Small Causes Court in RAE & R Suit No.826 of 1997 filed by the Petitioner against

the Respondents which decree is dated 19-9-2013. The said decree is restricted to the recovery of arrears of rent but the relief of possession was rejected. It appears that the Plaintiff made an application for certified copy on 16-10-2013, the certified copy was ready on 5-10-2013 which was received by the Plaintiff on 7-10-2013. The Plaintiff thereafter filed an Appeal, however, in view of the fact that the Appeal was belated by 70 days, the Plaintiff filed the instant Marji Application No.41 of 2014 for condonation of the said delay. The said delay was sought to be justified on the basis of the medical certificate dated 7-12-2013 where in it was stated that the Plaintiff was suffering from chronic obstructive pulmonary disease and that he was still under medical treatment and requires bed rest. The daughter of the Plaintiff who is working as a housemaid is his power of attorney which power of attorney has been executed by the Plaintiff in the year 1997 and that she is pursuing the proceedings which have been filed by the Plaintiff.

4 The said Marji Application No.41 of 2014 was opposed to on behalf of the Respondents herein who had filed their reply at Exhibit 5. The Respondents had questioned the reasons mentioned in the application and had contended that there is no merit in the application.

5 The Appellate Bench of the Small Causes Court considered the said Marji Application and by the impugned order dated 25-11-2014 has

rejected the said application. The rejection is interalia on two grounds firstly that the medical certificate is vague and secondly on the ground that the power of attorney of the Plaintiff who is his daughter was prosecuting the proceedings and therefore the power of attorney was required to file the Appeal within the stipulated time.

6 Heard the Learned Counsel for the parties.

7 The Learned Counsel appearing on behalf of the Petitioner would assail the order on the ground that the Appellate Bench of the Small Causes Court has not considered the application in proper perspective as the application under Section 5 of the Limitation Act is to be considered.

8 Per contra the Learned Counsel appearing on behalf of the Respondents would seek to justify the impugned order and would contend that the grounds set out in the application does not constitute sufficient cause.

9 Having heard the learned Counsel for the parties, in my view, the Appellate Bench of the Small Causes Court has proceeded on a totally erroneous premise and has thereby taken a hyper technical view of the matter. It is required to be noted that the original Plaintiff is around 91 years of age and had produced the medical certificate which discloses that he was suffering

from chronic obstructive pulmonary disease. The Appellate Bench of the Small Causes Court has brushed aside the said certificate on the ground that it is vague. How the certificate is vague, therefore begs an answer. It is also required to be noted that though the Plaintiff has executed a power of attorney in favour of his daughter, the daughter is working as a housemaid and therefore cannot be expected to know legal niceties that are involved in filing an Appeal. It is also possible that daughter would have been busy with her father who is suffering from an illness and who is more than 91 years and therefore was not expected to file the proceedings in question with reasonable despatch. The reasons mentioned by the Applicant in the said Marji Application can be said to be the plausible reasons for the delay. It is well settled that in the matters of condonation of delay a highly technical and pedantic approach should be eschewed and an approach which furthers the cause of substantial justice should be adopted. Though there is undoubtedly a delay of 70 days in filing the Appeal, the Appellate Bench could have considered the delay having regard to the fact that the Applicant is 91 years of age and that his daughter works as a housemaid. In my view, the order passed by the Appellate Bench of the Small Causes Court refusing to condone the delay of 70 days, in the fact situation as prevailing in the present case, cannot be sustained, the same is required to be quashed and set aside and is accordingly quashed and set aside, and the Marji Application No.41 of 2014 is accordingly allowed. In the facts and circumstances of the case this court does not deem it appropriate to

impose costs. The Petition is allowed to the aforesaid extent. Rule is accordingly made absolute in the aforesaid terms with parties to bear their respective costs of the Petition.

[R.M.SAVANT, J]