

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

CIVIL APPLICATION NO.792 OF 2015

IN

APPEAL FROM ORDER STAMP NO.10206 OF 2015

Smt. Rekha Kumar Shrimankar

.. Applicant

Versus

Ishwarlal J. Shrimankar

(Since deceased through Legal Heirs)

Smt. Manjulaben I. Shrimankar and others

.. Respondents

Mr. P. D. Patil for the Applicant.

Mr. Akshay Vani i/by MLS Vani & Associates for the Respondent No.3.

CORAM : R.M. SAVANT, J.

DATE : 25th JULY 2016

PC.

1 The above Civil Application has been filed for condonation of delay of 42 days in filing the above Appeal from Order. The reasons for the delay are mentioned in the Civil Application and especially in paragraph 2 thereof. The sum and substance of the reasons is that the Applicant is an NRI and is prosecuting the proceedings before the City Civil Court through Power of Attorney. It is after that impugned order came to be passed that the Applicant had requested the Power of Attorney to take legal opinion as to the recourse to be taken against the impugned order. It is in the said

process that some time has been lost.

2 The Respondent No.3 has filed affidavit opposing the condonation of delay. It is the submission of Learned Counsel Mr. Akshay Vani appearing for the Respondent No.3 that the reason mentioned in the paragraph 2 does not constitute sufficient cause.

3 Having heard the Learned Counsel for the parties. In my view, the reason mentioned in the paragraph 2 can be said to be the plausible reason for the delay of 42 days in filing the above Appeal from Order. It is well settled that a party should be given an opportunity to prosecute the proceedings on merits rather than being thrown out on technicalities. For the prejudice or inconvenience that is caused to the Respondent No.3 on account of the said delay of 42 days he can be compensated by way of cost. The Civil Application is accordingly allowed. Resultantly, the delay of 42 days in filing the above Appeal from Order is condoned. The Applicant to pay costs of Rs.2000/- to the Respondent No.3 within two weeks from date. List the Appeal from Order for admission after three weeks.

[R.M. SAVANT, J]