

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO. 2301 OF 2011
(FOR CONDONATION OF DELAY)

IN

FIRST APPEAL (ST). NO. 15179 OF 2011

IN

B.C.C.C. S.C. SUIT NO. 2539 OF 1996

ALONGWITH

CIVIL APPLICATION NO. 2128 OF 2015

ALONGWITH

CIVIL APPLICATION NO. 2302 OF 2011

IN

FIRST APPEAL (ST) NO. 15179 OF 2011

1. Indumati Govind Kalokhe & anr.

.....Applicants/
Appellants
(Orig. Plaintiffs)

V/s.

1A. Mrs. Sucheta Prashant Pathare & Ors.

.....Respondents
(Orig. Defendants)

* * * * *

Mr. Suresh Gole, Advocate for the applicant.

Mr. A.D. Yadav, i/by. Mr. D.R. Shah, Advocate for respondents no.1A and 2.

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

1st April, 2016.

P.C. :-

1). This Civil Application is for condonation of delay in filing the First Appeal. The application was filed on 7th June, 2011. Mr. Gole, learned Advocate appearing for the applicant tenders additional affidavit dated 23rd March, 2016 by way of further explanation for the delay.

2). The application is opposed by respondents no.1(a) and 2. In the application as filed, all that the applicant states, is that for the

judgment and decree dated 13th December, 2010, the application for certified copy as made on 14th January, 2011. The applicant does not disclose the date on which the certified copy was ready but claims that, he received it on 25th January, 2011. Thereafter, the appeal was filed on 6th May, 2011 and the application for condonation of delay filed on 7th June, 2011. Thus, the application by itself does not state any explanation whatsoever. The additional affidavit filed today, states that the applicant was not in a proper frame of mind because his mother was bedridden with heart ailment. According to the applicant, she had suffered heart attack on 6th March, 2006 and because of the heart attack, she had also mentally suffered. The applicant claims that, he and his family members were engaged in looking after her. Finally, the mother expired on 28th December, 2012. The applicant has annexed medical certificate dated 6th March, 2006 to the additional affidavit. This certificate issued by Kalyan Dombivli Municipal Corporation General Hospital, does not refer to any heart ailment. The mother, according to the Certificate, suffered from “DM with hypertension with I.H.D”. Thus, even the claim of the applicant of heart ailment of the mother in the year 2006 does not stand established. In any case, the heart attack suffered by the mother in the year 2006 cannot be set out as a ground for not being in action, more than four years thereafter. Thus, there is no case made out by the applicant for condonation of delay. Hence, the application for condonation of delay is dismissed.

3). In view of dismissal of the application, First Appeal (St) No.15179 of 2011, Civil Application No. 2128 of 2015 and Civil Application No.2302 of 2011 do not survive. The same is accordingly disposed off.

(SMT. R.P. SONDURBALDOTA, J)