

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
 CIVIL APPELLATE JURISDICTION
 CIVIL APPLICATION NO.248 OF 2014
 IN
 CIVIL REVISION APPLICATION NO.757 OF 2013
 WITH
 WRIT PETITION NO.6526 OF 2014

Office Notes, Office Memoranda of Coram, appearances, Court's orders, or directions, and Registrar's Orders	Court's or Judge's orders
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Mr. S. S. Kanetkar for Applicants in C.A. and for Respondent No.1 in Petition.

Mr. Madhav Jamdar for Respondent No.1 in C.A. and for original Petitioner in Petition.

CORAM : R. G. KETKAR, J.

DATE : 25TH NOVEMBER, 2016

P.C.:

Heard Mr. Kanetkar, learned Counsel for Applicants in Civil Application No.248 of 2014 and for respondent No.1 in Writ Petition No.6526 of 2014 and Mr. Jamdar, learned Counsel for respondent No.1 in Civil Application No.248 of 2014 and for original petitioner in Writ Petition No.6526 of 2014.

2. This is an application for condonation of delay of 2 years and 13 days in filing Civil Application for restoration of Civil Revision Application.

3. Mr. Kanetkar submitted that Civil Revision Application came up for admission before this Court on

12.07.2011. As the Advocate for the applicants remained absent at the first as well as the second call, it was dismissed for non-prosecution. He has taken me through paragraphs 3 and 4 of the application and submitted that delay in filing the application for restoration deserves to be condoned.

4. On the other hand, Mr. Jamdar strenuously opposed the application. He has taken me through the affidavit-in-reply filed on behalf of the respondent No.1, and in particular paragraphs 2 and 5 thereof. He submitted that applicants have not made out sufficient cause for condoning the delay.

5. I have considered the rival submissions advanced by the learned Counsel appearing for the parties. I have also perused the material on record. As noted earlier, Civil Revision Application was dismissed in default as the Advocate for the applicants remained absent at the first and second call. Applicants should not suffer because of non-appearance of their Advocate at the time of hearing of the C.R.A. In the case of ***State of Nagaland Vs. Lipok A.O.***, AIR 2005 SC 2191, it is held by the Apex Court that what counts is not the length of the delay but the sufficiency of the cause and shortness of the delay is one of the circumstances to be taken into account in using the discretion. The expression “sufficient cause” should be considered with pragmatism in a justice-oriented approach rather than the technical detection of sufficient cause for

explaining every day's delay.

6. In view of the above decision as also for the reasons stated in the application, applicants have made out sufficient cause for condoning the delay. Hence, Civil Application is allowed in terms of prayer clause (a) with no order as to costs and C.R.A. is restored to its original position.

(R. G. KETKAR, J.)

Minal Parab