

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

**CIVIL APPLICATION NO.92 OF 2015
IN
FIRST APPEAL (ST) NO.29733 OF 2014
WITH
FIRST APPEAL (ST). NO.29733 OF 2014**

Mrs.Jagruti Samir Bhatia .. Applicant

vs.

Mr.Girishkumar Vasanji Bhatia and Ors. .. Respondents

Ms.Seema Sarnaik and Mr.Amey Tamhane for the applicant
Mr.Vijay Dhingreja i/b Ms.Sapana S. Kukreja for respondent no.1
Mr.Yogendra M. Kanchan for respondent no.3

**CORAM : K.K.TATED, J.
DATED : 25/01/2016**

PC:

1 Heard the learned counsel for the parties.

2 This application is preferred by org.defendant no.1 for condonation of 2 years 117 days delay in filing First Appeal challenging the judgment and decree dated 3.4.2012 passed by Bombay City Civil Court, Mumbai in S.C.S.No.2753 of 2010 by which the Trial Court issued permanent order of injunction restraining the applicant from entering the suit premises i.e. flat nos.7 and 8, Murli Mahal, Bhaudaji Cross-Road No.10, Matunga, Mumbai 400 010 and disturbing the peaceful possession of the respondent no.1 original plaintiff.

3 It is the case of the applicant that as soon as the judgment and decree was passed by the Trial Court she immediately applied for

certified copies on the same day i.e. 3.4.2012. Certified copies were ready on 16.6.2012. It is the case of the applicant that applicant again applied for certified copies on 4.5.2013 and same was ready for delivery on 26.6.2013. The applicant filed the present First Appeal in this court on 10.11.2015 i.e. beyond the period of limitation by two years and 117 days.

4 The learned counsel for the applicant submits that for want of sufficient funds and knowledge about taking appropriate steps to file First Appeal there is a delay on the part of applicant to prefer the present First Appeal. She submits that the respondent no.3, husband of applicant filed Petition A-1585 of 2010 on 24.6.2010 in the Hon'ble Family Court at Mumbai at Bandra under section 13(i)(ia) of the Hindu Marriage Act, for divorce and custody of daughters. She submits that Family Court by judgment and decree dated 17.7.2014 allowed divorce petition filed by respondent no.3 by dissolving marriage of the applicant with the respondent no.3. She submits that custody of the daughter Riya was granted to respondent no.3. She submits that Family Court allowed the petition E-17 of 2011 filed by applicant by granting maintenance of Rs.40,000/- per month inclusive of rent w.e.f.1.7.2014 and Rs.15000 by way of litigation expenses. She submits that when the applicant decided to file Appeal challenging the judgment and decree passed by Family Court, at that time, after going through all the papers and proceedings advocate for the applicant learnt that Applicant has not challenging the judgment and decree passed by Bombay City Civil Court, Mumbai dated 3.4.2012 in S.C.Suit No.2753 of 2010 by which the Trial Court restrained the applicant from entering the suit premises. Hence, the present advocate advised the applicant that she

has to challenge the said judgment and decree for complete justice. At that time, applicant decided to file the present First Appeal in this court. She further submits that because of financial difficulty and knowledge about filing of First Appeal in this court, there is a delay in preferring the First Appeal. She submits that applicant has good chance of success in the present proceeding. In support of this contention, the learned counsel for the applicant relies on paragraph 9, 10 and 11 of the Civil Application.

5 The learned counsel for the applicant submits that in the interest of justice, this Hon'ble Court be pleased to condone the delay in filing First Appeal. She submits that if delay is not condoned, irreparable loss and injury will be caused to the applicant. Advocate for the applicant submits that by impugned judgment and decree dated 3.4.2012 Trial Court restrained the applicant from entering her matrimonial house i.e. suit property.

6 On the other hand, the learned counsel for the respondent no.1 as well as respondent no.3 vehemently opposed the present Civil Application. Both the respondents filed Affidavit-in-Reply to oppose the present Civil Application.

7 The learned counsel for the respondent no.1 submits that applicant has not shown sufficient cause for condonation of 2 years and 117 days delay in filing First Appeal. He submits that applicant in Civil Application stated that, she had no knowledge about the filing of First Appeal in this court, itself is a misleading statement made by applicant on solemn affirmation. He submits that before Family Court, applicant

in her cross-examination specifically stated that she has not challenged the order passed by Bombay City Civil Court, Mumbai dated 3.4.2012. In support of this contention, the learned counsel for the respondent relies on the portion of cross-examination of the applicant i.e. paragraph 91 and 93 which reads thus:

“91 The copy of complaint dated 2nd December, 2010 filed by petitioner with list Ex.47 now shown to me. The witness has gone through the complaint. The signature i.e. “Girish V. Bhatia” is not the signature of the petitioner which appears on complaint. It is true to say that my parents-in-law have filed permanent injunction suit against me in City Civil Court. It is true to say that the City Civil Court has passed permanent injunction order against me and the petitioner that not to enter into the Murli Mahal house. It is true to say that my present lawyer was representing me in City Civil Court.

93. I have not produced any documentary proof to show that the petitioner and his father are joint owners of a flat No.26, Juhu Sameep Chamber Summons Ltd. Andheri West. The permanent injunction order has been passed on 20th February, 2012. I have not challenged the permanent injunction order passed against me in a suit filed by my father in law. It is not true to say that I have made serious allegation on the City Civil Court about granting permanent injunction against me. It is not true to say that I have falsely stated in my affidavit that my father-in-law has obtained permanent injunction on the basis of fabricated documentary proof.”

8 The learned counsel for the respondent no.1 submits that as the applicant failed to show sufficient cause for condonation of inordinate delay, there is no substance in the present Civil Application and same be dismissed with costs. In support of this contention, he relies on the judgment of the Apex Court in the matter of ***P.K.Ramachandran v.***

State of Kerala and Another, AIR 1998 S.C.C. 2276. He relies on paragraph 6 of the said judgment which reads thus:

“6. Law of limitation may harshly effect a particular party but it has to be applied with all its rigour when the statute so prescribes and the Courts have no power to extend the period of limitation on equitable grounds. The discretion exercised by the High Court was, thus, neither proper nor judicious. The order condoning the delay cannot be sustained. This appeal, therefore, succeeds and the impugned order is set aside. Consequently, the application for condonation of delay filed in the High Court would stand rejected and the Miscellaneous First Appeal shall stand dismissed as barred by time. No costs.”

9 On the basis of these submissions and the law declared by the Apex Court, the learned counsel for the respondent no.1 submits that there is no substance in the present Civil Application and same be dismissed with costs.

10 In similar way, the learned counsel for the respondent no.3 also vehemently opposed the present Civil Application. He also submits that applicant has not shown sufficient cause for condonation of inordinate delay. There is no substance in the present Civil Application and same be dismissed with costs.

11 I have heard both the sides at length. It is to be noted that in the present proceeding, Trial Court passed judgment and decree dated 3.4.2012. Immediately, thereafter applicant applied for certified copies on same day i.e. 3.4.2012 and same was ready for delivery on 16.6.2012. That certified copies were collected by the applicant on 16.6.2012. The present First Appeal filed by her on 10.4.2015. There

is no explanation in the present Civil Application what steps applicant has taken during this period for two years. The reason given by the applicant in paragraph 9, 10 and 11 of the Civil Application also does not show sufficient cause for condonation of inordinate delay.

12 The reason given by the applicant about want of knowledge for filing First Appeal is also not correct because in cross-examination before Family Court, applicant specifically stated she has not challenged the order passed by Bombay City Civil Court, Mumbai dated 3.4.2012. This itself shows that inspite of having knowledge about the filing of First Appeal challenging the impugned order passed by Trial Court, applicant failed and neglected to do so. This goes against her in the present Civil Application itself.

13 Our High Court in the matter of **Laxman Divekar Vs. State of Maharashtra 1998 (1) Mh.L.J 745** held that Court has no power to arbitrarily condone the delay in the name of advancing substantial justice.

14 The Apex Court in the matter of **Damodar Pillai Vs. South Indian Bank Ltd, 2005(5) All.M.R. 961 (SC)** held that hardship or injustice is not a ground for extending the period of limitation.

15 The Apex Court in the matter of **Pundlik Jalam Patil Vs. Ex.Engg. Jalgaon Medium Project and Ors, 2008(6) BCR 513** held that unless and until sufficient cause is shown, inordinate delay should not be condoned.

16 The Apex Court in the matter of **Commissioner, Nagar Parishad, Bhilwara Vs. Labour Court, Bhilwara & Anr, 2009(3) SCC pg 525** held that while dismissing an Appeal on the ground of limitation, going into the merits of the case is not allowed.

17 The Apex Court in the matter of **Oriental Aroma Chemical Industries Limited Vs. Gujarat Industrial Development Corporation reported in 2010 (5) SCC 459**, held that in the absence of sufficient cause, Court should not condone the delay.

18 The Apex Court in the case of **B. Madhuri Gaud Vs. B. Damodar Reddy, 2012 (12) SCC 693** held that if sufficient cause is not shown, delay should not be condoned.

19 The Apex Court in the matter of **Esha Bhattacharajee Vs. Managing Committee of Raghunathpur Nafar Academy 2013(12) S.C 450** held that if sufficient cause is not shown, application for condonation of delay be rejected.

20 Considering the above mentioned facts and circumstances and the law declared by the Apex Court, I do not find any substance in the present Civil Application. Civil Application is rejected.

21 In view thereof, nothing survives in the First Appeal. Registration of First Appeal is rejected.

(K.K.TATED, J.)