

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

**CIVIL APPLICATION NO.1519 PF 2015
IN
APPEAL FROM ORDER STAMP NO.30280 OF 2015**

**Umeshchandra Chandu Barkur : Applicant
versus
Uday Chandu Barkur : Respondent.**

Mr. Shanay Shah i/by Mr. Prakash M. Mulky for the Applicant.

**CORAM : R. M. SAVANT, J.
DATE : 06th June 2016**

P.C.

1 The above Civil Application has been filed seeking condonation of delay of 1 year and 182 days in filing the above Appeal from Order. The reasons why the delay has occurred are mentioned in paragraph 4 of the Civil Application. The sum and substance of the reasons is that after the impugned order came to be passed, the Applicant/Appellant's wife started keeping unwell and was ultimately required to be hospitalized on 09/06/2014 and thereafter passed away on 24/06/2014. It has further been averred that on account of the sudden death of the Appellant's wife, his daughter also got affected and that the Appellant had to take care of his daughter. It has further been averred that since the Appellant had a grievance as regards the manner in which his wife was treated by the doctor in question, the Appellant had to take steps to

file a complaint before the Maharashtra State Consumer Disputes Redressal Commission on account of which he was pre-occupied. It has further been averred that the Appellant's father in law has also expired in February 2015. The aforesaid circumstances, according to the Applicant/Appellant have resulted in the said delay of 1 year and 182 days being caused.

2 The Applicant and the Respondent are the brothers. It appears that the bone of contention between the parties is the residential flat in which the Respondent is residing in respect of which the Appellant seeks to lay a claim. Be that as it may, having regard to the reasons mentioned in the above Civil Application, the same can be said to be plausible reasons for the said delay of 1 year and 182 days occurring. It is well settled that a party should be given an opportunity to prosecute his/her case on merits rather than being thrown out on technicalities.

3 None appears for the Respondent though served and hence the case set out by the Applicant/Appellant in paragraph 4 of the Civil Application and its sub-paragraphs has gone uncontested.

4 Hence accepting the reasons mentioned in the above Civil Application, the same is accordingly allowed. Resultantly, the delay of 1 year and 182 days in filing the above Appeal from Order stands condoned. The

above Civil Application is accordingly disposed of. List the above Appeal from Order for admission after two weeks.

[R.M.SAVANT, J]