

Atul

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION NO. 378 OF 2017

Zaitoonbi Yakub Ansari	...Applicant
<i>Versus</i>	
Mohammed Shafique Ansari & Anr.	...Respondents

Mr KD Jha, *for the Applicant.*
Mr MA Ghatte, *for Respondent No. 1.*

CORAM: G.S. PATEL, J
DATED: 27th November 2017

PC:-

1. Heard. The challenge in this Civil Revision Application is to an order dated 20th March 2017 rejecting an application to condone a delay of 216 days in filing a substantive first appeal against a decree in RAD Suit No. 1986 of 2012. The applicant was the original plaintiff.

2. It appears that the dispute is between the applicant, Zaitoonbi, and the original 1st defendant, the 1st respondent to the Civil Revision Application, Mohammed Shafique Ansari. He claims to be Zaitoonbi's nephew. Both claim to be the tenants of the property in question of which the landlady is the 2nd defendant, Mariam Calcuttawala. It seems that Mohammed Shafique Ansari filed a counter-claim also seeking a counter declaration. The trial

court passed a common order and decree saying that both Zaitoonbi and Mohammed Shafique Ansari were joint tenants. It is against this decree that Zaitoonbi sought to appeal, though belatedly, and it is the refusal of her delay condonation application that she challenges, saying *inter alia* that by not properly appreciating the facts of the case to condone the delay, her substantive rights in the first appeal have been irrevocably lost.

3. There is some substance to this. It appears that the mistake in the delay condonation application was regarding the date of application of the certified copy and nothing further. The fact that Zaitoonbi is over 80 years old, a widow and of extremely limited means are sufficient reasons to afford relief. There is certainly no reason not to afford her at least an opportunity of arguing her first appeal.

4. Of course it is now argued that Zaitoonbi is not in fact a senior citizen, or at least not a senior as she claims, nor as impoverished as she says because she engages “high profile Advocates” (including, presumably, her present lawyer, Mr Jha, who stoutly rebuffs the honour sought to be conferred). The less said of this argument is the better.

5. It just will not do for Courts to be overly rigid in such matters. Far greater delays are routinely condoned and unless it is shown that the conduct of the person seeking condonation of delay is so utterly false, and deliberately so, as would shock the conscience of the Court, or that the delay is so gross that it cannot possibly be

condoned without causing significant prejudice to the other side, a liberal view is certainly to be commended.

6. The impugned order is quashed and set aside. The delay is condoned. Appeal (Stamp) No. 1169 of 2016 is restored to file. Parties will appear before the Appellate Bench on 11th December 2017 with an authenticated copy of this order. The Appeal will be got numbered and will then be decided on its own merits at the Appellate Court's earliest possible convenience but without any time-frame being fixed.

7. Rule is made absolute in these terms. There will be no order as to costs.

(G. S. PATEL, J)