

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**

**CIVIL APPELLATE JURISDICTION**

**WRIT PETITION NO.6552 OF 2017**

Jayantilal Investments

... Petitioner

v/s

Purushottam D. Patel and others

... Respondents

Mr Murlidhar L. Patil for Petitioner.

**CORAM : B.P. COLABAWALLA, J.**

**DATE : JULY 12, 2017**

**P.C.:**

1. This Writ Petition has been filed challenging the order dated 20<sup>th</sup> March 2017 whereby the Appellate Bench of the Small Causes Court, Mumbai (Bandra) condoned the delay of approximately 138 days in filing the Appeal by the Respondents against the ex-parte eviction decree passed against them. The learned counsel appearing on behalf of the Petitioner brought to my notice the Application seeking condonation of delay and more particularly the averments in paragraphs 4 and 6 thereof. He submitted that looking to these averments, the Respondents have approached this Court with unclean hands. He submitted that the ex-parte decree was passed on 20<sup>th</sup>

March 2017 whereas the excuse trotted out was that the constituted attorney of the Respondent who was supposedly attending to the matter could not do so because of the ill-health and subsequent passing away of his wife in the year 2012. In these circumstances, he submitted that the delay condonation was wholly unacceptable and the appellate Authority ought to have dismissed the Application filed by the Respondent.

2. I have heard the learned counsel as well as perused the papers and proceedings in the Writ Petition, I have also gone through the impugned order. It is not in dispute that the decree passed against the Defendants is a eviction decree and was passed ex-parte in their absence. Apart from stating that their constituted Attorney viz. Shri Goopalbhai is 85 years old and is not able to understand fully, it is specifically stated that the Advocates engaged by the Defendants – M/s Raj and Associates never informed the Defendants as to when the matter came up and neither did the said Advocates remain present. Taking these facts into consideration and after relying upon two decisions of this Court, the Appellate Authority came to the conclusion that the delay is sufficiently explained and condoned the

same. On going through the impugned order, I do not find that the discretion exercised by the Appellate Authority can be said to be suffering from any perversity and/or an error apparent on the face of the record requiring interference in my limited jurisdiction under Article 227 of the Constitution of India. It is now well settled that the procedure of the Court has been prescribed to facilitate justice and not to defeat it. Unless it is shown that the parties are deliberately trying to protract the litigation or the Application suffers from malafides, the Court should be liberal in condoning the delay. This is for the simple reason that no litigant benefits from letting a matter be decided against him in his absence.

3. For the foregoing reasons, I find no merit in this Writ Petition and the same is dismissed. However, there shall be no order as to costs.

**(B.P. COLABAWALLA, J.)**