

Santosh

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION (ST) NO. 28729 OF 2016
WITH
CIVIL APPLICATION NO. 737 OF 2017**

Ahura Engineering Co & Ors	...Petitioners
<i>Versus</i>	
VF Lobo (deceased) & Ors	...Respondents

Mr Javed Akhtar Khan, *for the Petitioners.*

**CORAM: G.S. PATEL, J
DATED: 14th November 2017**

PC:-

1. Leave to amend the Petition forthwith to correct the prayers. of Reverification dispensed with.

2. Heard. The Writ Petition takes exception to an order dated 8th August 2016 by which the Appellate Bench of the Small Causes Court, Mumbai allowed an application condoning a delay of 82 days in filing the Appeal subject to costs of Rs.10,000/-.

3. To begin with, I do not believe this is the kind of order that calls for any interference at all. Mr Khan's submission is misconceived. He objects to the grounds put forward by the Appellants but in doing so

overlooks the reasons set out by the Appellate Court, viz., that the approach must certainly be liberal to the extent possible and a Court in such a situation is required to balance the competing equities. Refusing to condone the delay would undoubtedly have resulted in quite considerable prejudice to the Appellants. They would have lost possession. The Court quite correctly allowed the delay but at the same time put the Appellants to terms and imposed costs. It is not for me to sit in appeal over the quantum of costs.

4. This is enough reason to dismiss or reject the present Petition. I find, however, that there are other reasons and these appear in the Petition itself from pages 5 and 6. There are several grounds of challenge and some of these are so remarkable that they need to be quoted.

5. Ground (h) says that the learned Appellate Court ‘erred in holding’ that due to a fault of an Advocate the Respondent should not suffer. I do not pretend to understand what this is supposed to mean, if anything. If the suggestion is that a litigant *should* suffer for the fault of the Advocate, then that is contrary to several decades of established law and is wholly untenable.

6. Ground (j) at page 6 says that the learned Appellate Court has taken a liberal view in granting reliefs. This again is not a ground of challenge. The law in this regard is also well-settled.

7. Most regrettable of all is the language used in ground (i) where it is said that the Appeal Court should have considered the fact that the Affidavits filed were only “blatant lies and nothing else”. Apart from

anything else, I expect a certain moderation in language in filings in this Court. There is absolutely no occasion or justification for use of language like this.

8. It is also a practice to be soundly deprecated to use the names of the individual judges of the Appellate Court in the prayer as if the identity of the judge has anything at all to do with the sustainability of the order under challenge. I have today directed Mr Khan to immediately amend his prayer clause (a).

9. The Petition is rejected. There will be no order as to costs.

10. In view of dismissal of the Petition, the Civil Application is infructuous and is disposed of accordingly.

11. The Writ Petition is even yet on the stamp number with objections not being removed. All objections are to be removed within one week from today, failing which there will be, in addition to the rejection an order of costs of Rs.10,000/-.

(G. S. PATEL, J.)