

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**ORDINARY ORIGINAL CIVIL JURISDICTION****NOTICE OF MOTION NO. 1204 OF 2017****IN****APPEAL (L) NO. 399 OF 2016****IN****PARSI SUIT NO. 17 OF 2015**

Sairin Mehernosh Homavazir ... Applicant

In the matter of :

Sairin Mehernosh Homavazir ...Appellant

vs.

Mehernosh Jamashed Homavazir ...Respondent

Smt. Seema Sarnaik for the appellant.

Ms. Sanobar Nanavati for the respondent.

**CORAM : SHANTANU KEMKAR &
M.S. SONAK, JJ.
JULY 31, 2017**

P.C.:

Heard learned counsel for the parties on notice of motion seeking condonation of delay in filing the accompanied appeal. We find that the delay has been satisfactorily explained. Accordingly the delay is condoned.

2. We have also heard learned counsel for the appellant on the question of admission. Challenging the order dated 2.9.2016 which has been passed on the basis of the consent terms filed by the parties, the appellant/plaintiff no. 2 has filed the appeal. Learned counsel for the appellant submits that the consent terms

have been obtained by force and fraudulent way by the respondent and as such the order passed on the basis of the said consent terms deserves to be set aside.

3. We have gone through the impugned order based upon the consent terms. We are of the view that in case the petitioner wants to agitate the grounds of fraud and force in getting the consent terms executed and order passed on its basis, it is for the appellant to file appropriate proceedings before the trial court for setting aside the impugned order and decree.

4. With the aforesaid liberty to avail the remedy as may be available to the appellant in accordance with law, we decline to interfere with the impugned order, Notice of motion as also the appeal stand disposed of.

(M.S. SONAK, J.)

(SHANTANU S. KEMKAR, J.)