

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

**CIVIL APPLICATION NO. 2624 OF 2016
WITH
FIRST APPEAL (ST.) NO. 7804 OF 2016**

Abbas Nuruddin Kagalwala	... Applicant/Appellant
V/s.	
Asgeri Khalid Thakur	... Respondent

Mr. Deepak Shukla I/b M/s. Vinod Mistry & Co. for the Applicant/Appellant.

CORAM : K.K. SONAWANE, J.

DATE : 25th JULY, 2018.

P.C. :

1 Heard learned Counsel for the Applicant. Despite the endeavor to serve notice to Respondent through paper publication, no response received from the Respondent. Therefore, opportunity to hear the Respondent could not be availed in the present proceeding. The Applicant moved the present Application for delay of 209 days in filing the Appeal against the impugned judgment and order passed by the City Civil Court, Mumbai, in S.C. Suit No.3489 of 2008. The learned Counsel for the Applicant submits that after the impugned judgment and order, the

Appellant attempted to get the present order rectify by filing the Review Petition. But, it was later on withdrawn and the Appellant approached to this Court to present an Appeal against the impugned judgment and order passed by the learned Trial Court dated 09.03.2015. But, there was a delay hence the Appellant moved the present Application. According to the learned Counsel for the Appellant, the delay caused to present an Appeal was not intentional and deliberate but caused due to endeavour on the part of Appellant to get redress his grievances by filing Review Petition. As referred above, even after service of notice through paper publication, there was no response received from the Respondent. In such circumstances there is no impediment to condone the delay caused for presenting the Appeal by the Appellant to award the substantial justice. It is settled principle of law that while dealing with the application for condonation of delay, the Court should adopt liberal and pragmatic approach instead of pedantic approach.

2 In view of nature of the subject matter in the present proceeding, I find it justifiable to condone the delay to afford reasonable opportunity to the parties to the proceeding for substantial justice into the matter. The appellant cannot be precluded on the technical issue to get redress his grievance by approaching to the Appellate forum. Hence delay caused in the present Application deserves to be condoned. However, there is

considerable delay of 209 days in presenting the appeal. In such circumstances it would be justifiable to impose some monetary fetter on the applicant so that it would sub-serve the purpose in the interest of justice for the inconvenience, if any, caused to the Respondent. Hence, Civil Application deserves to be allowed

3 Accordingly the Application stands allowed in terms of prayer clause (a). The delay caused for presenting an Appeal against the impugned judgment and order passed by the learned Trial Court in S.C. Suit No.3489 of 2008 is hereby condoned subject to payment of cost of Rs.25,000/- within a month from the date of this order. Accordingly, the Civil Application stands disposed of in above terms.

4 On depositing the cost of Rs.25,000/-, registry to take requisite steps for further process.

5 On registration of Appeal, issue notice to Respondent, returnable on 11.09.2018.