

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO. 3003 OF 2017
IN
FIRST APPEAL ST. NO. 19120 OF 2017

Mr. Mahendra Chimanlal Shah & Ors. ...Applicants

Versus

M/s. Vora Brothers & Ors. ...Respondents

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Mr. Ashok T. Gade a/w. Mr. Sagar Jadhav for the Applicants.
Mr. Kapil Moye a/w. Mr. Alok Patel i/b. Mahendra Patel & Associates
for Respondent Nos. 1 to 5.

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CORAM: **MRS.MRIDULA BHATKAR, J.**
DATE : **FEBRUARY 07, 2018**

P.C.:

1. This Application is moved for condonation of delay of 329 days in filing the First Appeal.
2. The learned Counsel for the applicants submits that initially the Appeal from Order is filed against the judgment and order of rejection of the plaint before this Court. By order dated 05.04.2017, this Court has held that the Appeal against order under Order 43 of the C.P.C.is not maintainable, as Order 7 Rule 11 of the CPC is challenged. Thereafter, First Appeal was filed and hence, delay is caused. He further submits that applicant nos. 1 to 3 are senior citizen and out of them, two applicants have crossed 80 years.

3. The learned Counsel for respondent nos. 1 to 5 opposes this application for want of sufficient ground. He submits that earlier the application was not rejected under Order 7 Rule 11, but rejected under Order 22 Rule 9 sub-rule 1 of the CPC.

4. In view of the above submission and the reasons mentioned therein, I am of the view that sufficient cause is made out and hence, delay is condoned.

5. Civil Application is allowed and is disposed of accordingly.

6. First Appeal be registered.

(MRIDULA BHATKAR, J.)