

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

**CIVIL APPLICATION NO. 1731 OF 2017
IN
SECOND APPEAL ST. NO. 18658 OF 2017**

Islam Jaugubhai Shaikh

...Applicant

Vs.

Hasan Jaugubhai Shaikh

...Respondent

.....

Mr.Kishor Naik h/f. Mr. Sushant Prabhune for the Applicant.
Smt.Savita A. Prabhune for the Respondent.

.....

**CORAM : A. M. DHAVAL, J.
DATE : AUGUST 29, 2018**

PC :-

1. Heard learned advocates.
2. Learned advocate for the applicant submits that there is a delay of 47 days in filing the Second Appeal. He states that the applicant is a senior citizen was not keeping well and, therefore, he required time to contact the advocate and handover the work.

3. Learned advocate for the respondent submits that the delay has not been properly explained. The applicant is the original plaintiff. He had filed a suit for perpetual injunction, which was compromised. In the same suit, the defendant had filed counter claim, which was decreed on 18th February, 2017. It was directed that the appellant's structure should be demolished. No application for certified copy was immediately filed. It was filed on 19th May, 2017 when the period of 90 days was over. The copy was received on 3rd June, 2017. The Second Appeal was filed on 30th June 2017, but the application for condonation of delay has been filed on 17th July, 2017.

4. Though the application does not show specific reason, I find that there are some lapses on the part of his advocate in not filing certified copy in time and not drafting application for condonation of delay in time. Considering the above facts and negligence on the part of the advocate, the delay

was not inordinate. The delay of 47 days is condoned, subject to payment of cost of Rs. 1000/- to the respondent within a period of one week. Civil Application is allowed in terms of prayer clause (a) and is accordingly disposed of.

5. Interim protection is extended. If the cost is deposited within stipulated time, Appeal be taken up for registration.

[A. M. DHAVALE, J.]