

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.4248 OF 2018
IN
FIRST APPEAL ST. NO.19450 OF 2018

Naina Shantilal Dave

-vs-

Sureshchandra Mansukhlal Vashani and ors.

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Shri Abhinav Chandrachud, Advocate with Shri Ashish
Suryavanshi, Advocate I/b K. P. Tiwari & Co. for
appellant.
Shri Ashok Pande, Advocate for respondent nos.1a, 1b
and 2.

CORAM : A.S.CHANDURKAR, J.

DATE : December 12, 2018

Prayer in the application is to condone delay in filing the first appeal. The delay as caused is of about 114 days. The reasons for the cause of delay are mentioned in paragraphs 4 and 5 of the application. It is submitted by the learned counsel for the applicant that the applicant is aged about 72 years and on account of her indifferent health she could not take steps earlier within limitation to file the appeal.

The application is opposed by the original plaintiff by filing reply. It has been stated that the reasons assigned are not sufficient. The suit was defended by the Power of Attorney holder of the applicant herein and thus he could have filed the appeal earlier. Moreover, the balance amount of consideration has been deposited with the trial Court.

On perusing the application as well as the reply and after hearing the learned counsel for the parties I do not find that the delay as caused is deliberate. The decree for specific performance having been passed against the present applicant, there does not appear to be any reason to deliberately delay filing of the appeal. Though it is urged that the proceedings were prosecuted by the Power of Attorney Holder of the present applicant, that by itself would not be a reason to refuse to condone delay in filing the appeal. The reasons as assigned for the cause of delay appear to be acceptable.

Hence by accepting the reasons mentioned in the application, the delay for filing the appeal stands condoned.

Civil Application is allowed and disposed of.

First Appeal St. No.19450 of 2018

To come up for admission on 20/12/2018.

(A.S.CHANDURKAR, J.)