

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

**NOTICE OF MOTION NO.422 OF 2018
IN
APPEAL (L) NO.396 OF 2017**

Veritas Exports	...	Applicant/Appellant
V/s.		
Bank of Baroda	...	Respondent

Mr.Vivek Kantawala with Mr.Amey Patil i/by M/s Vivek Kantawala & co. for the Appellant/Applicant.
Mr.A.B.Shinde i/by M/s Anant B. Shinde & Co. for the Respondent.

**CORAM : A.S.OKA AND M.S.SONAK, JJ.
DATE : AUGUST 21, 2018.**

P.C. :

1. Heard learned counsel appearing for the applicant and the learned counsel appearing for the respondent. This is a notice of motion seeking condonation of delay of 429 days in preferring an appeal. The appeal is sought to be preferred against judgment and decree dated 16th June 2016, by which money suit filed by the present applicant was dismissed by the learned Single Judge.
2. For a long delay of more than 400 days, reasons have been assigned by filing affidavits. The notice of motion is opposed by the learned counsel appearing for the respondent.

3. The Judgment in the suit was pronounced on 16th June 2016. It is stated that certified copy of the impugned judgment became available on 4th July 2016. It appears from Paragraph No.2 of the affidavit-in-support of the notice of motion that immediate steps were not taken by the applicant for preferring an appeal. It is claimed that the applicant changed the Advocate, who was appearing in the suit and in July 2017, the Advocate who filed appeal were engaged. The delay in entrusting the papers to the new Advocates is sought to be explained by the averments in Paragraph No.3 of the notice of motion. It is pointed out that the officer who was handling the legal matters and the retained Lawyer left the organization. The contention of the respondent is that there is no explanation for such a long delay. It is pointed out that the averments made in the affidavit-in-support are vague and moreover, the proprietor of the applicant is a limited company.

4. We have perused the impugned judgment. In the money suit filed by the applicant, there is a claim of Rs.1,21,91,905/-. After a contest, the suit was dismissed. It is true that there is a long delay of 429 days. The occasion for consideration for the prayer

for condonation arises only when there is some default on the part of a litigant. In the present case, it cannot be said that the applicant was negligent. The Apex Court has repeatedly held that while dealing with an application for condonation of delay, the Court has to adopt a liberal and justice oriented approach. Therefore, in the facts of the case, sufficient cause is made out to condone the delay by compensating the respondent by awarding heavy costs. Considering the facts of the case, the costs amount is quantified at Rs.75,000/-. Accordingly we pass the following order:-

ORDER

- i) The Notice of Motion is made absolute by condoning the delay;
- ii) The applicant/appellant shall pay costs quantified at Rs.75,000/- to the respondent within a period of four weeks from which date this order is uploaded. Payment of costs will be condition precedent. On the failure to pay costs within stipulated time, the present notice of motion shall stand dismissed.

(M.S.SONAK, J.)

(A.S.OKA, J.)