

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

905 CIVIL APPLICATION NO. 8169 OF 2019
IN
SAST/726/2018

H.M.T. LIMITED AND ANOTHER
VERSUS
PALANIAPPAN VAIDYANATHAN LATE SHRI. T.
PALANIAPPAN

.....
Mr. A.R.Vaidya, Advocate for Applicants.
Mr. A.R.Sabnis, Advocate for Respondent.

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CORAM : V.L.ACHLIYA, J.
DATE : 26/09/2019
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ORAL ORDER :

1. This application is filed seeking following reliefs.

[i] This Hon'ble Court be pleased to restore the original Civil Application No. 8039 of 2018 and Second Appeal Stamp No. 726 of 2018 by recalling order dated 10/09/2018.

[ii] This Hon'ble Court be further pleased to condone delay of 12 days caused in filing of this Civil Application.

2. In brief, it is the contention of learned counsel for applicants that in consequences of common order passed by this Court on 10/09/2018, the application filed by the appellant seeking condonation of delay along with appeal came to be dismissed in default for taking steps to serve unserved respondents within stipulated period. It is

submitted that the steps could not be taken within time as the respondent was not found residing at the address given and which was within the knowledge of applicant. Since the respondent has shifted to Chennai, the service could not be effected. It is submitted that the applicant has good case to succeed on merit. In case application is not registered, serious consequences would follow. It is further submitted that in compliance of the order passed by this Court, the applicant has deposited Rs. 7 Lakhs.

3. On the other hand, learned counsel for respondent opposed the application with the contention that no case has been made out to set aside the order of dismissal. It is submitted that there is inaction on the part of applicants to take necessary steps in the matter. No extension of time was sought to take steps in the matter. Mr. Sabnis, learned counsel accepts notice of application for respondent.

4. On due consideration of submissions advanced in the light of reasons assigned seeking setting aside the order, I am of the view the application deserves to be allowed. The applicant has deposited Rs. 7 Lakhs in terms of the order passed by this Court. No serious prejudice would be caused if application is allowed and the application filed seeking condonation of delay in filing appeal is registered. I am, therefore, inclined to allow the application in terms of prayer clause 'B' and 'C'.

5. List the application seeking condonation of delay for hearing on 04/10/2019.

6. S.O. 04/10/2019.

[V.L.ACHLIYA]
JUDGE

KNP.