

DDR

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

**WRIT PETITION NO. 3930 OF 2017  
WITH  
CIVIL APPLICATION NO. 2067 OF 2019  
IN  
WRIT PETITION NO. 3930 OF 2017**

Vijay Baablya Aalim ..Petitioner/Applicant  
v/s.

ICICI Bank Limited ..Respondent

....

Shri N.N. Gawankar with Shri M.N. Gavankar for  
petitioner/applicant.

Ms. Gargi Bhagwat i/b. M/s. Divekar Bhagwat & Co. for  
respondent.

....

**CORAM : M.S.KARNIK, J.**

**DATE : 13<sup>th</sup> SEPTEMBER, 2019**

**P.C. :**

Heard learned counsel for the petitioner.

2. The Civil Application No.2067 of 2019 is filed by  
applicant – original respondent in Writ Petition for staying the  
proceedings in Regular Civil Appeal on the file of the District  
Judge-I, Ratnagiri.

3. By consent of the parties the Writ Petition No. 3930 of 2017 itself is taken up for hearing.

4. By order dated 29<sup>th</sup> October, 2018 this Court issued Rule on the Petition. However, it was observed that no case is made out for granting interim relief. The hearing was expedited.

5. The challenge in this Petition is to an order passed by the First Appellate Court condoning the delay of 1021 days in filing the Appeal. The respondent – original plaintiff filed the suit for recovery of an amount of Rs.8,76,153/- from the petitioner. The said suit came to be dismissed by the trial Court. The trial Court was of the opinion that the suit is barred by the law of limitation.

6. The respondent - Bank filed Miscellaneous Civil Application No. 4 of 2015 before the First Appellate Court for condoning the delay of 1021 days in filing the Appeal. In the said application the reason stated is that after receipt of the certified copy of the judgment and decree of the trial Court, the

Advocate for the plaintiff-Bank advised the plaintiff-Bank to file Appeal before this Court. However, the pecuniary jurisdiction of the District Court was enhanced with effect from 28<sup>th</sup> August, 2012. It was thereupon advised to file Appeal before the District Court, Ratnagiri.

7. In the application for condonation of delay it is further stated that in the meantime the Branch Manager Shri Kulkarni retired and therefore necessary steps for filing the Appeal could not be taken for sometime. There was delay in communication from the concerned office that the Appeal would now be maintainable before the District Court at Ratnagiri. For all these reasons the respondent - bank prayed that the delay be condoned. The First Appellate Court allowed this application and condoned the delay subject to payment of cost of Rs.6000/- (Rupees Six Thousand only).

8. Learned counsel for the petitioner by challenging this order stated that the application made for condonation of delay does not disclose any satisfactory reasons. He would

submit that for condoning the delay sufficient cause has to be made out. He would submit that there is hardly any reason mentioned in the application for condonation of delay. He would submit that wrong advise of the Advocate could not be good reason for condoning the delay. In any case he would submit that though pecuniary jurisdiction was enhanced from 28<sup>th</sup> August, 2012, even thereafter there has been substantial delay in filing the Appeal as the application was made only on 18/12/2014. According to him, the plaintiff is a reputed Bank having all possible resources at its disposal. The Bank has not been diligent in pursuing the statutory remedy of Appeal. For all these reasons, he would submit that the Appellate Court was not justified in condoning the delay. In the alternative he submitted that the cost imposed by the Appellate Court is grossly inadequate considering the length of the delay coupled with the other circumstances on record. Another submission learned counsel made is that the suit itself is barred by law of limitation and therefore also the present Petition should not be entertained as this would cause serious prejudice to the petitioner.

9. Learned counsel for the respondent – Bank on the other hand supported the order passed by the Appellate Court. She would submit that the suit is filed for recovery of money from the petitioner. She would further submit that it is because of the advice by the concerned Advocate that the steps were being taken to file Appeal in this Court. However, on account of increase in the pecuniary jurisdiction of the District Court, the petitioner much later on came to know that the Appeal is to be preferred before the District Court. She would further submit that concerned Branch Manager in the meantime had retired and therefore there is delay in filing the Appeal. The respondent can be compensated with cost which the Appellate Court has already imposed while condoning the delay.

10. I have gone through the order passed by the Appellate Court and considered the submissions of learned counsel.

11. No doubt, there is delay of 1021 days in filing the Appeal. The reasons stated in the application for condonation of

delay is wrong advise of the Advocate of the petitioner. Pursuant to the order passed by this Court on 8/10/2018, the concerned Advocate filed an affidavit stating that he had opined and advised the respondent – Bank to prefer the Appeal before this Court. From the application it is seen that in the meantime the Branch Manager of the respondent – Bank retired. In my opinion, there is no reason to interfere with the impugned order. The Appellate Court for reasons recorded accepted the explanation of the respondent – Bank. While condoning the delay it imposed cost of Rs.6,000/-. However, considering the length of delay, the cost imposed by the Appellate Court is inadequate.

12. The suit is for recovery of the amount due and payable to the respondent – Bank. Considering the explanation given by the respondent -Bank in the application for condonation of delay, the respondent – Bank should not be deprived of the opportunity to contest the Appeal on merits. According to me, though the order passed by the Appellate

Court condoning delay does not call for interference, the respondent-Bank deserves to be saddled with cost of Rs.50,000/- (Rupees Fifty Thousand only). The balance cost to be paid to the petitioner within a period of 2 weeks from today if the cost of Rs.6000/- as imposed by the Appellate Court is already paid.

13. The Petition is partly allowed.

14. Civil Application does not survive and the same is disposed of.

**(M.S.KARNIK, J.)**