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

**CIVIL APPLICATION NO. 2490 OF 2017
IN
FIRST APPEAL (STAMP) NO. 10318 OF 2017**

Shri Mahendrakumar Bhika & Anr. .. Applicants
Vs.
Shri Babu (Babubhai) Bica (Bhikha) & Ors. .. Respondents

Mr. P. N. Joshi for the Applicants.
Mr. R. Fernandes for Respondent Nos.1 to 8.

CORAM : K. K. TATED, J.
DATE : 3rd APRIL, 2019.

P. C. :

1. Heard learned Counsel for the parties.
2. By this Civil Application, the Applicants-original interested parties Nos.5 & 6 are seeking condonation of delay of 1 year 37 days in filing the First Appeal challenging the Judgment dated 29.02.2016 passed by learned Civil Judge, Senior Division at Diu in Inventory Proceedings No. 1/2015.
3. Learned Counsel for the Applicants submits that as soon as the Judgment and decree passed by the trial Court, they immediately applied for certified copy on 11.05.2016. The same was ready for delivery on 08.12.2017 and thereafter the First Appeal filed before this Court on 05.04.2017.
4. Learned Counsel for the Applicants submits that their daughter Hena Mahendra is 11 years old. She is suffering from disease "Cerebral

Palsy and Mental illness” and is under treatment. Because of that, there was delay on the part of the Applicants to file First Appeal within time. Learned Counsel for the Applicants submits that their one of the brother Sanjiv, original interested party No.9 is settled at U.K. He was likely to explore the possibility of amicable settlement between the parties. Therefore, there was delay on their part to file First Appeal in this Court. In support of his contention, learned Counsel for the Applicants relies on paragraphs 2 and 3 of the Civil Application which read thus:

*“2. The Petitioners state that Daughter Hena Mahendra, aged about 11 years old is suffering from disease “Cerebral Palsy & Mental illness” therefore, requires constant touch with Doctor Treatment with the patient. The Petitioner is required to go to Diu City for better treatment. A copy of the Medical Certificate is annexed hereto and marked as **Exhibit 1**.*

3. One of the brother Sanjiv original Interested Party No.9 is settled at U. K. as he was likely to come to the amicable settlement between the Interested Parties but did not turn up and therefore, the delay is caused.”

5. Learned Counsel for the Applicants submits that in the interest of justice, this Hon'ble Court be pleased to condone the delay in filing the First Appeal.

6. On the other hand, learned Counsel Shri Fernandes appearing on behalf of the Respondents vehemently opposed the present Civil Application. He filed their Affidavit-in-Reply dated 29.03.2019. Same is taken on record. The learned Counsel for the Respondents submits that

actually the Applicants filed application for certified copies on 23.01.2017 and not on 11.05.2016 as argued by the learned Counsel for the Applicants. He submits that there is no explanation in the Civil Application why the Applicants took more than one year in applying for certified copies. Not only that, the certified copy was delivered to the Applicant on 08.02.2017. In spite of that, the Applicants filed the present First Appeal in this Court in the month of April, 2017. There is no explanation for more than two months delay in filing the First Appeal from the date of receipt of certified copy of the Judgment and decree.

7. The learned Counsel for the Respondents submits that the reason disclosed by the Applicants in paragraphs 2 and 3 is not correct. He submits that the Applicants' daughter Hena is 11 years old. She is not keeping well since her childhood. Not only that, the Applicant No.1 himself is doctor. Therefore, there is no question of condoning the inordinate delay on these grounds. He further submits that the Applicants failed to place on record any documentary evidence showing that their one brother Mr. Sanjiv was supposed to settle the matter between the parties.

8. The learned Counsel for the Respondents submits that even before the trial Court, in spite of service, no one appeared on behalf of the Applicants when the matter was called out. He submits that it is specifically recorded in the Judgment dated 29.02.2016 that the matter proceeded ex parte against the Opponents-Interested Party Nos.5 and 6 i.e. the Applicants. Therefore, there is no question of condoning the

inordinate delay of more than one year in filing the First Appeal.

9. I heard both the sides at length.

10. Bare reading of Civil Application shows that the Applicants relied on two grounds for condonation of delay. One is about her daughter Hena is not keeping well and another is his brother Sanjiv-original Interested Party No.9 settled at U. K. supposed to intervene for settlement. It is to be noted that the Applicants' daughter Hena is not keeping well since her childhood. Apart from that, Applicant No.1 is medical practitioner. Therefore, that cannot be a ground for condonation of inordinate delay of more than one year. Next ground about the settlement. Nothing is on record to show that his brother Mr. Sanjiv agreed to intervene for settlement.

11. The Apex Court in the following authorities held that for condonation of delay, Applicant must show sufficient cause. Not only that, if there is unreasonable delay, then there is no question of condoning the same. The Apex Court held that the Limitation Act, 1963 has not been enacted with the object of destroying the rights of the parties but to ensure that they approach the court for vindication of their rights without unreasonable delay. The Apex Court also held that if incorrect facts are stated in the application, then also there is no question of allowing the application for condonation of delay. Those authorities are as under:

- (1) *Balwant Singh (Dead) Vs. Jagdish Singh & Ors.* (2010) 8 SCC 685.
- (2) *B. Madhuri Goud Vs. B. Damodar Reddy* (2012) 12 SCC 693.
- (3) *Madhya Pradesh Matsya Mahasangh Vs. Sudheer Kumar & Anr.* (2010) 15 SCC 179.

(4) *Pundlik Jalam Patil (Dead) By LRs. Vs. Executive Engineer, Jalgaon Medium Project & Anr. (2008) 17 SCC 448.*

12. In the case in hand, the Applicant has not disclosed true facts in the present Civil Application. Not only that, they failed to disclose sufficient cause for condonation of inordinate delay.

13. Hence, the following order:

The Civil Application stands rejected.

[K. K. TATED, J.]