

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION No. 164 OF 2017
IN
FIRST APPEAL No. 2368 OF 2011

Patheja Brothers Unsecured CreditorsApplicant

In the matter between

Patheja Brothers Unsecured Creditors TrustAppellant

Vs.

Mrs. Sumitra Dinkar Kale and Anr.Respondents

Mr. Sanskar Marathe I/b. Apte & Co. for Applicant

Mr. Balasaheb R. Deshmukh for Respondent No.1

CORAM: K.K. TATED, J.

DATED : JUNE 19, 2019

P.C. :

1. Heard learned counsel for the parties.
2. Learned counsel Mr. Sanskar Marathe for the Applicant submits that both the Respondents are duly served. He undertakes to file affidavit of service in the Registry within one week from today. Same is permitted.
3. Leaned counsel for the Respondent No.1filed affidavit in reply dated 5th July, 2019. The same is taken on record.
4. By this civil application, the Applicant -Original Plaintiff is seeking to restore the First Appeal (St) No. 19516 of 2009 (First Appeal No. 2368 of 2011) which stands dismissed in view of conditional order dated 8th June, 2011 passed by this Court for non-filing

of private paper-book.

5. Learned counsel for the Applicant submits that inadvertently, it remained on their part to file the private paper-book within time. He submits that the Applicant have good chance of success in the First Appeal. He submits that in the interest of justice, this Hon'ble Court be pleased to condone the delay in filing the civil application and allow the Applicant to file private paper-book and matter be heard on its own merits. He submits that the paper-book is ready and he undertakes to file the same within one week from today. He submits that if the delay is not condoned and the applicant is not allowed to file private paper-book, irreparable loss would be caused to the Applicant.

6. On the other hand, learned counsel Mr. Balasaheb Deshmukh for Respondent No.1 vehemently opposed the present civil application. He submits that the Applicant has not shown sufficient cause for condonation of delay of more than 3 years for complying the order dated 8th June, 2011 passed by this Court. Hence, there is no question of entertaining the present civil application and same is required to be dismissed with costs.

7. I heard both the counsels at length. It is to be noted that because of mistake on the part of the Advocate, the litigants should not suffer. In the civil application, it is specifically stated that inadvertently, it remained on their part of advocate to comply the order dated 8th June, 2011 within time.

8. The learned counsel for the Applicant undertakes to file private paper book within two weeks from today.

9. Considering this fact, in the interest of justice and because of the

mistake on the part of the Advocate, the litigants should not suffer, I am satisfied that the Applicant has made out a case for following order:

- (a) Delay in filing the civil application is condoned.
- (b) First Appeal No. 2368 of 2011 is restored on file and be heard on its own merits.
- (c) Time to comply the order dated 8th June, 2011 is extended till 29th June, 2019.
- (d) If private paper-book I filed within time, the Registry is directed to take appropriate steps to transfer the matter to the concerned District Court.
- (e) Civil Application stands disposed of accordingly.
- (f) No order as to costs.

(K. K. TATED, J.)