

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

**CIVIL APPLICATION NO. 2862 OF 2016
IN
FIRST APPEAL (ST.) NO. 15219 OF 2016**

The Board of Trustees of
the Port of Mumbai

.. Applicant

Vs.

1. State Bank of Bikaner Jaipur
& Ors.

.. Respondents

Mr.Ajai Fernandes I/b Motiwalla & Co. for applicant.

Ms.N. Sumnani I/b Bhatt & Saldana for respondent No.2 and 3.

CORAM : N.J. JAMADAR, J.

DATE : 2ND APRIL 2019

P.C.

- 1) Heard the learned counsels for the parties.
- 2) This is an application for condonation of 49 days delay in preferring the appeal against the judgment and decree dated 9th February 2015 passed by the City Civil Court, Bombay in B.C.C.C. Suit No.4043 of 2009.
- 3) The reason assigned for the delay is that the time was lost in obtaining the opinions of the counsels in the matter for preferring the appeal and also in getting the appeal memo settled.
- 4) The respondent No.1 has not appeared, though an affidavit of service has been filed by the applicant. The respondent Nos.2 and 3 have resisted the application by filing their counter. The learned counsel for respondent Nos.2 and 3 submitted that no reason is assigned in the application for

condonation of delay and the applicant is seeking condonation on bald assertions.

5) The learned counsel for the petitioner would, however, urge that for an inadvertence on the part of the Advocates, the parties should not be made to suffer.

6) It is true that the averments in the application for condonation of delay are of general nature. However, the fact that the applicant is an instrumentality of the State and, therefore, has an impersonal character, cannot be lost sight of. Some allowance is required to be made while considering an application for condonation of delay preferred by an instrumentality of the State though different standards do not apply.

7) It is trite that the Court is expected to lean in favour of condonation of delay so as to advance substantial justice by permitting the parties to get the dispute adjudicated on merits. Thus, I am inclined to allow the application for condonation of delay.

8) The application is allowed subject to payment of costs of Rs.2,000/- by the applicant to the respondent Nos.2 and 3. The costs be paid within a period of two weeks from today. The appeal be registered after the applicant pays the costs to the respondent Nos.2 and 3.

9) The civil application accordingly stands disposed of.

[N.J. JAMADAR, J.]