

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO. 3557 OF 2011
IN
FIRST APPEAL (ST). NO. 17511 OF 2011

Abdul Kadar Abdul Matin Siddique

...Applicant

Versus

Sakinabi Abdul Matin Siddique & Ors.

...Respondents

...

Ms. Madhuri R. Raibagkar, Advocate for Applicant.

Mr. Mohan V. Kanade i/b Ms. Sushma Vishwakarma, Advocate for the Respondent
Nos. 1, 2, 3.

Ms. Sheetal Mane, Advocate for Respondent No. 5-BMC.

...

CORAM : K.K.TATED, J.
DATED : SEPTEMBER 27, 2019

PC.

1. Not on board. At the request of the Advocate for the Applicant matter is taken on production board for urgent orders.
2. Heard learned Counsel for the parties.
3. By this Application, Applicant-Original Plaintiff is seeking condonation of 49 days delay in filling First Appeal challenging the Judgment and Decree dated 14th March 2011 passed by the City Civil Court, Bombay in L. C. Suit No. 31 of 2006.
4. The learned Counsel for the Applicant submit that, because of mistake on the part of advocate giving incorrect advice to the Applicant there is delay in filing

First Appeal. She submits that, advocate advised that limitation to file the First Appeal is 90 days whereas actually it is 30 days only. In support of her contention the learned counsel for the Applicant relies on paragraph no. 3 of the Civil Application which reads thus:-

‘3.” The Impugned order was passed on 14th March, 2011. The Applicant applied for certified copy of the same on 17th March, 2011. The Applicant obtained the certified copy on 28th April, 2011. The Applicant filed the above appeal on -07-2011, however, the Applicant was informed by his lawyer that as per Limitation Act 90 days time is provided and hence, the appeal could not be filed in time and there is delay of 49 Days.

5. On the basis of this submissions, the learned counsel for the Applicant submits that, because of mistake on the part of the advocate, the Applicant should not suffer. She submits that, they have good chance of success in the present application. She submits that, if delay is not condoned irreparable loss will cause to them.

6. On the other hand, learned Counsel Mr. Mohan Kanade appearing on behalf of the Respondent Nos. 1 to 3 vehemently opposed the present Civil Application. He Submits that, the Applicant failed to disclose the name of the advocate who has given advise of limitation of the 90 days to file the First Appeal before this Court, against the Judgment and Decree passed by City Civil Court, Bombay.

He further submits that, the Applicant has not disclose cause for delay in the present matter. Hence there is no question of allowing the present application.

7. Considering the submission made by learned Counsel for the Applicant and the averments made in para 3 of Civil Application, because of mistake on the part of the advocate, I am satisfied that the Applicant has made out a case for allowing the Civil Application.

8. Hence, the following order is passed:

- a) Delay in filing First Appeal, is condoned.
- b) Applicant to pay costs of Rs. 5000/- to Respondent Nos. 1 to 3 or their Advocate on or before 11th October 2019 and place on record, the receipt to that effect, failing which the Civil Application shall stand dismissed accordingly.

9. Civil Application stands disposed of accordingly.

10. No order as to costs.

(K.K.TATED, J.)