

Urmila Ingale

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL STAMP NO.27200 OF 2016
WITH
CIVIL APPLICATION NO. 1812 OF 2016

Shri Jalindar Ambadas Badale	.. Appellant
Vs.	
Ahmed Gudan Mujawar and ors.	.. Respondents

Mr.Sharad T.Bhosale, for the Appellant.
Mr.Amol Dhumal i/b Mr.Umesh Kurund, for Respondents No. 2
& 3.

CORAM : M.S.KARNIK, J.

DATE : 28th JUNE, 2019

P.C. :

. Heard learned Counsel for the parties.

2.. This is an Appeal against the order dated 05/12/2015 passed by District Judge-1, Barshi in Civil Misc. Application No. 35 of 2014 rejecting the application for condonation of delay of 33 days in filing the Appeal. The judgment and decree of the trial Court is dated 26/11/2012. There was delay of 33 days in filing the Appeal. In the

application for condonation of delay before the First Appellate Court, it was stated that he was mis-advised by his Counsel about the period of limitation for preferring Appeal. It is also stated that on account of ill health of the appellant, the application for condonation of delay could not be filed within time. At the relevant time, appellant was 71 years of age. In my opinion, the First Appellate Court committed an error in rejecting the application for condonation of delay when the delay was of 33 days only. The approach of the Appellate Court appears to be hyper-technical. The appellant is 71 years of age and he stated that he is not keeping sound health, therefore to reject the contention of the appellant only because he has failed to produce medical certificate on record is not justified. The appellant stated that he did not receive proper advice as to period within which the Appeal had to be filed so that it will be within limitation. These reasons deserved acceptance & for the delay the respondents could be adequately compensated by awarding costs. For all these reasons, the order passed by the Appellate Court deserves to be set aside. Hence, the following

order.

ORDER

- (i) The present Appeal is allowed.
- (ii) Civil Misc. Application No. 35 of 2014 filed by the appellant before the District Judge -1 Barshi is allowed by condoning the delay subject however to payment of costs of Rs.5,000/- to the respondents No.2 & 3. Costs to be paid within 2 weeks from today.
- (iii) First Appellate Court to hear the Appeal on its own merits.

4. Nothing survives for consideration in Civil Application No. 1812 of 2016, therefore, the same is disposed of.

5. All office objection are dispensed with.

(M.S.KARNIK, J.)