

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO. 2847 OF 2015
IN
FIRST APPEAL ST. NO. 29821 OF 2014

Usmangani Ibrahim & Ors. ..Applicants

Versus

Ibrahim Haji Ali Mohmad Kasmani ...Respondent

.....
Mr.Rajesh Parab for the Applicants.
None for the Respondent.

.....
CORAM: V.G.BISHT, J.
DATE: 19TH DECEMBER, 2019

PC:-

1. None present for the Respondent though served.
2. Read Civil Application.
3. Heard learned Counsel for the Applicants.
4. On going through the contents of the Civil Application, it appears that Special Civil Suit No. 1 of 2004 filed by the Applicants came to be dismissed by the trial Court on 18th December, 2010. Later on, the Applicants preferred an Appeal along with the Application for condonation of delay against the said judgment and decree before the District Court, Diu. However, since the

maintainability of the proceedings was raised in the light of pecuniary jurisdiction, they withdrew the Appeal and preferred Civil Revision Application (St.) No. 19177 of 2013 before this Court. It further appears that later on, the Applicants changed their advocate and appointed Advocate Shri K. Balakrishnan, but as the said Advocate underwent by-pass surgery, he handed over the brief to the present Advocate. Then, it appears that instead of filing First Appeal, the Civil Revision Application came to be filed before this Court which eventually again came to be withdrawn with liberty to file an appropriate proceeding. That is how the present Appeal with application for condonation of delay.

5. From the above factual background, it is more than clear that there was bonafide error on the part of the learned Advocate for the Applicants for which the Applicants cannot be blamed. It was purely the error on the part of the concerned Advocate to pursue the appropriate legal remedy in accordance with law. Even otherwise, since the Suit was dismissed, the Applicants could not have gained anything by causing delay in pursuing the appropriate legal remedy before the appropriate forum. Also despite of due service, the respondent remained absent.

6. In view of aforesaid situation, in my considered opinion, the delay of 3 years and 262 days is bonafide and deserves to be condoned.

7. Civil Application is allowed and disposed of accordingly.

8. List the First Appeal after numbering for admission on 28th January, 2020.

(V.G.BISHT, J.)