

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

**CIVIL APPLICATION NO. 4046 OF 2017  
IN  
FIRST APPEAL ST. NO. 34694 OF 2017**

M/s. Renuka Exports Private Limited .... Applicant  
V/s.  
Union of India Through Textile  
Commissioner & Anr. ... Respondents

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Mr. Aurup Dasgupta a/w. Ms. Sonam Ghiya i/b jhangiani, Narula and Associates for the Applicant.  
Mr. D.P. Singh a/w. Sarang Pathak for Respondent No.1 (Union of India)  
Adv. Vaishali R. Bhilare for Respondent No.2.

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**CORAM : K.K.Tated, J.  
DATE : 30<sup>th</sup> September, 2019**

**P.C. :**

1. Heard learned counsel for the parties.
2. By this Civil Application, applicant/defendant No.1 is seeking condonation of 59 days delay in filing the First Appeal, challenging the Judgment and Decree dated 14<sup>th</sup> August 2017 passed by City Civil Court, Bombay in Suit No. 8544 of 1995 (High Court Suit No. 1682 of 1995).

3. The learned counsel for applicant submits that, in the present proceeding the respondent No.1/Original plaintiff filed Suit No. 8544 of 1995 for enforcement for bank guarantee and for recovery of sum of Rs.48,90,000/-. He submits that, the Trial Court vide impugned Judgment and Decree dated 14<sup>th</sup> August 2017 held that, respondent/original plaintiff is entitled to enforce bank guarantee upon the original defendants for the amount of Rs. 30,00,000/- with interest @ 10 p.a. from the date of 15<sup>th</sup> July 1991 till its realization. He submits that, as soon as the impugned Judgment and Decree passed by the Trial Court they immediately applied for certified copy on 1<sup>st</sup> September, 2017 and same was ready for delivery on 27<sup>th</sup> September, 2017. He submits that, the applicants' head office is at Delhi, they don't have any regional office in Mumbai. He submits that, it remained on the part of advocate who appeared on behalf of them in Trial Court to immediately communicate the order passed by the Court. Hence, there is delay in filing the First Appeal before this Court. He further submits that, the advocate inform them that limitation for filing the First Appeal is three months from the receipt of the certified copy of the Judgment, where as the actual limitation is only one month. In support of this contention, the learned counsel for the applicant relies on Para-4 of Civil Application which reads thus :-

*“4) The Applicant states that the Applicant is based in Delhi and has no office or representation in Mumbai, after the Order and Judgment dated 14<sup>th</sup> August 2017 was made available to the Applicant i.e., on 13<sup>th</sup> September 2017, they instructed their erstwhile Advocate to prepare and file the Appeal. The said Advocate erroneously informed the Applicant that the period of limitation for filing the First Appeal is three months from the receipt of Certified copy of the Judgment.”*

On the basis of these submissions, the learned counsel for applicant submits that, in the interest of Justice this Hon’ble Court be pleased to condone the delay in filing the First Appeal and matter to be heard on its own merits. He submits that, if delay is not condoned, irreparable loss will cause to them.

4. Advocates on behalf of respondents vehemently opposed the present Civil Application. Both the counsel submits that, applicant failed to place on record the affidavit of the advocate who failed to take appropriate steps in the matter. Hence, there is no substance in the present Civil Applicant and same to be dismissed with cost.

5. It is to be noted that the Apex Court in the matter of ***N.Balkrishnan Vs. M. Krishnamurthy (1998) 7 SCC 123*** held that, the object of fixing the time limit is not meant to destroy the rights. The law of limitation fixes a lifespan for such legal remedy for the general

welfare.

6. Considering the submission made by the learned counsel for the applicant and averment made in Civil Application and authority in the matter of *N.Balkrishnan Vs. M. Krishnamurthy* (Supra), I satisfied that the applicant has made out a case for allowing this Civil Application.

7. Hence, following order is passed.

**: ORDER :**

- a) Delay in filing the First Appeal is condoned.
- b) Civil Application stands disposed of accordingly.
- c) No order as to costs.

**(K.K.TATED, J.)**