

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

CIVIL APPLICATION NO. 2116 OF 2018

WITH

CIVIL APPLICATION NO. 2117 OF 2018

IN

FIRST APPEAL (ST.) NO. 36628 OF 2017

Gopal K. Nair

.. Applicant

Vs.

Asian Paints PPG Private Ltd.

.. Respondent

Mr.Yogendra M. Kanchan, Advocate for applicant.

Mr.Sangram S. Hotankar, Advocate for respondent.

CORAM : N.J. JAMADAR, J.

DATE : 13TH MARCH 2019

P.C.

CIVIL APPLICATION NO. 2116 OF 2018

1. Heard the learned counsel for the applicant and the learned counsel for the respondent.

2. This is an application for condonation of delay of 113 days in preferring the appeal against the order dated 31st August 2017 passed by the learned Ad-hoc Judge, City Civil Court, Borivali Division, Dindoshi, Mumbai in Summons for Judgment No.62 of 2015 in Summary Suit No.96 of 2015.

3. The learned counsel for the applicant submits that after the impugned order was passed, the father of the applicant died and, therefore,

the applicant was not in proper frame of mind to take the necessary steps for filing the appeal. A copy of the Death Certificate issued by the Department of Panchayats, Taluka Muvattupuzha, District Ernakulam, State of Kerala indicating that Balakrishnan Nair died on 19th September 2017 is placed on record in support of the said claim.

4. The learned counsel for the respondent resisted the prayer for condonation of delay. It was submitted that apart from the said fact of death of the father of the applicant, there are no reason which would amount to sufficient cause for not preferring the appeal within the stipulated period.

5. The impugned order was passed on 31st August 2017. The Death Certificate reveals that the father of the applicant died on 19th September 2017. In this backdrop, the assertion of the applicant that on account of death of his father, he was not in the proper frame of mind and could not diligently prosecute the matter for filing the appeal within the stipulated time appears to be reasonable and justifiable.

6. Even otherwise, the Court is expected to lean in favour of condonation of delay and adjudicate *lis* on merits. Thus, to advance the cause of substantial justice, I am inclined to allow the application. The application for condonation of delay stands allowed. The delay in

preferring the appeal stands condoned. The appeal be registered.

7. The application stands disposed of accordingly.

[N. J. JAMADAR, J.]