

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

924 CIVIL APPLICATION NO.7207 OF 2019
IN SA (STAMP) NO.15375/2019

STATE BANK OF INDIA
VERSUS
FAHMIDA ANSARI MOHD. SIRAJUDIIN ANSARI AND
OTHERS

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Mr.V.R. Patil, Advocate for the applicant.
Mr.P.N. Sonpethkar, Advocate for respondent
nos.1 to 3.

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CORAM: V.L. ACHLIYA,J.
DATE : 18.02.2020

ORAL ORDER:

The applicant-appellant has moved this application seeking condonation of 102 days delay in filing appeal for the reasons set out in detail in the application.

2. Heard learned counsel for the appellant-applicant and counsel representing the respondent nos.1 to 3.

3. In brief, it is the contention of learned counsel for the applicant that the delay caused in filing appeal cannot be termed as deliberate and intentional. It is submitted that as against the dismissal of the suit, the respondents-plaintiffs had

filed appeal before this Court. During the pendency of appeal, the pecuniary jurisdiction of District Court was enhanced. Therefore, the appeal came to be transferred to District Court. The applicant was under impression that the Advocate engaged by them regularly attending the Court and taking care of the matter. In the month of March, 2019, when the applicant received the notice of Execution proceedings from Executing Court of execution of decree and made inquiry, it was revealed that the appeal came up for hearing on 23.10.2018 and the same has been allowed by the District Court, Aurangabad. The suit filed by respondents-plaintiffs decreed in their favour. It was also revealed that, the Advocate engaged by the applicant remained absent before appellate Court. Immediately, thereafter the applicant has taken steps to file appeal. After obtaining certified copies presented appeal. In the process, 102 days delay has been caused in filing appeal. It is submitted that there is conflicting decisions rendered by the Courts below. If the delay is not condoned, there is every likelihood that the meritorious matter may be rejected for technical reason. In case, the delay is condoned, no prejudice would cause to the

respondents.

4. On the other hand, the learned counsel for the respondents have opposed the application with contention that the reasons assigned are false and concocted. The reasons assigned for condonation of delay are vague and even the name of Advocate responsible for delay also not mentioned in the application. It is submitted that an attempt has been made to throw blame upon Advocate representing the applicant so as to create grounds for condonation of delay.

5. I have carefully considered the submissions advanced in the light of record and proceedings. The judgment and order passed by the First Appellate Court indicates that the Advocate representing the applicant-appellant was absent at the time of hearing of appeal. In that view, the reasons assigned seeking condonation of delay cannot said to be false and concocted. The possibility cannot be ruled out that the applicant was not informed by their Advocate about listing of case for hearing as well as judgment and order passed in the matter. By the impugned judgment and decree, the appeal preferred by

the respondents has been allowed and the suit of the plaintiffs decreed as against the applicant-respondent. In that view, the cause assigned for condonation of delay more than sufficient to condone the delay.

6. So far as prejudice caused to the respondents, the same can be compensated in terms of money. I am therefore inclined to allow the application subject to costs of Rs.15,000/- to be payable to the respondents. The amount of costs be deposited within four weeks. On deposit of costs, the appeal be registered.

7. In the event, the costs is deposited the respondents will be at liberty to withdraw the same.

8. Civil Application is disposed of in above terms.

[V.L. ACHLIYA]
JUDGE

SGA