

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO. 947 OF 2019
IN
REJECTED CASE NO. 113 OF 2017

Hiralal M. Chaturvedi ...Applicant

IN THE MATTER BETWEEN

Hiralal M. Chaturvedi (Choe) ...Appellant

Versus

Shri.Mathur Chaturvedi,
Dharamshala Trust & Ors. ...Respondents

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Mr.Hiralal M. Chaturvedi, Applicant-in-person present.
Mr.Ankit Lohiya i/b. Mulani & Co. for Respondent No.1.

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CORAM: V.G.BISHT, J.
DATE: 29TH JANUARY, 2020

PC:-

1. Heard the applicant-in-person and Mr.Lohiya, learned Counsel for respondent No.1.
2. By way of present Application, the applicant-in-person seeks to set aside the order dated 12th April, 2018 passed by Registrar (Judicial-II) in Civil Application (St.) No. 18872 of 2017 in Rejected Case No. 113 of 2017.

3. On going through the record, it is seen that First Appeal (St.) No. 19593 of 2016 came to be refused on 18th November, 2016 by Registrar (Judicial-II) for non-compliance of direction. This order is nowhere challenged by the applicant-in-person. This fact was brought to the notice of this Court by learned Counsel for respondent No.1 during the course of argument. Although, learned Counsel for respondent No.1 vehemently opposed the present Civil Application, but in the alternate submitted that if this Court is inclined to condone the delay, then in that eventuality, the First Appeal be heard finally on merits.

4. It appears that the applicant's counsel Mr.D.S.Chandnani used to look after the matter of the applicant and he did so till November, 2016. As he thereafter underwent angiotherapy and angioplasty, he could not attend the matter. Moreover, M.R.Software regularly used to send the messages of the matters appearing before the various Courts wherein Mr.Chandnani used to appear in Civil Application (St.) No. 18872 of 2017. On 12th April, 2018, no message was received and, therefore, on that day, he could not attend the matter, as a result of which, Civil Application (St.) No. 18872 of 2017 came to be refused.

5. There is delay of 223 days in moving the present Application. As has already been suggested by learned Counsel for respondent No.1 to hear the First Appeal itself on merits expeditiously, in my considered opinion, it is always desirable that the Appeal be decided on merits instead of going into niceties and technicalities of the delay.

6. In the circumstances, the delay of 223 days stands condoned. The order dated 18th November, 2016 passed by Registrar (Judicial -II) in First Appeal (St.) No. 19593 of 2016 and the order dated 12th April, 2018 passed by Registrar (Judicial-II) in Civil Application (St.) No. 18872 of 2017 in Rejected Case No. 113 of 2017 stand set aside. Civil Application (St.) No. 18872 of 2017 and First Appeal (St.) No. 19593 of 2016 are restored to their original position.

7. Civil Application is disposed of accordingly.

8. The applicant-in-person is hereby directed to remove office objections within a period of two weeks from today. After

removing the office objections, First Appeal be kept for final hearing on 26th February, 2020 at 3.00 pm.

(V.G.BISHT, J.)