

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

CIVIL APPLICATION NO.4563 OF 2016
IN
FIRST APPEAL STAMP NO.17646 OF 2016

M/s. Truly Creative Dev. Pvt. Ltd. ... Applicant.
V/s.
Samatanagar Co.op Hsg. Soc.
Union Ltd. and Anr. ... Respondents.

Mr.G.N.Salunkhe i/b Umesh Kurund for the Applicant.

CORAM : V.G. BISHT, J.

DATE : 6TH JANUARY, 2020.

P.C.:

1. Heard Mr.Salunkhe, learned counsel for the applicant. None for Respondent Nos.1 and 2, though duly served.
2. By this application, the appellant/applicant is seeking condonation of delay of 5 years and 335 days against the judgment and order dated 07/05/2010 passed in Notice of Motion No.1285/2009 in S.C. Suit No.1782/20008 by the City Civil Court at Dindoshi, Borivali Division, Mumbai thereby allowing Notice of Motion and rejecting the plaint under Order 7 Rule 11(d) of the Code of Civil Procedure. It then appears that against the said impugned judgment and order the appellant preferred Writ Petition No.4912/2011 before this Court (Coram: R.G. Ketkar, J.). Vide order dated 02/05/2016 this Court allowed the appellant/applicant to withdraw the petition with liberty to file an appeal.

3. It is apparent that pursuant to the impugned order dated 07/05/2010, the appellant preferred Writ Petition which eventually came to be withdrawn with liberty to file present appeal on 02/05/2016. It further appears that pursuant to the liberty granted, the appellant filed present appeal, however, because of pursuing of wrong legal remedy the delay of 5 years 355 days was caused. Since the liberty was given by this Court vide order dated 02/05/2016 to file an appeal and having regard to the facts and circumstances of the case, in my considered opinion the said delay is required to be condoned and, accordingly, the delay stands condoned.

4. List the Appeal for admission 3rd February, 2020.

(V.G. BISHT, J.)