

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

WRIT PETITION NO.1159 OF 2020

Mrs. Anisha Raifq Padania & Another	..	Petitioners.
v/s.		
Kumar Builder & Others	..	Respondents.

Mr. Omprakash Pandey, for the Petitioners.
Mr. Karl Tamboly with Mr. Pradeep Bakhru, Mr. Murli & Ms. Alisha Mehta,
i/b. Wadia Ghandy & Co., for Respondent Nos.1 & 2.

CORAM: A.S.GADKARI,J.
DATED : 5th FEBRUARY, 2020.

PC:-

By the present Petition under Article 227 of the Constitution of India, the Petitioners/ Obstructionist have impugned Order dated 4th November, 2019 passed by the Appellate Bench of the Small Causes Court, Mumbai in Marji Application No.172 of 2019, below Exhibit 18 in Obstructionist Notice No.767 of 2015 in Execution Application No.477 of 2015 in T.E. & R Suit No. 64/77 of 2005, rejecting the said Application preferred by the Petitioners for condonation of delay of about 120 days in filing Appeal.

2 Heard Shri. Omprakash Pandey, learned Counsel for the Petitioners and Shri. Karl Tamboly, learned Counsel for Respondent Nos. 1 & 2. Perused the record.

3 At the outset, Mr. Pandey, learned Counsel for the Petitioner submitted that, the delay in filing the said Appeal is not 120 days but it is 107 days. He submitted that, the son of Petitioner No.2 was suffering from liver tumor and was undergoing medical treatment at TATA Memorial Hospital so also at Wadia Hospital and therefore could not file Appeal against the order dated 17th November, 2019 below Exh. 18 in Obstructionist Notice No.767 of 2015 in Execution Application No.477 of 2015. He further submitted that, relevant medical papers of his Son Zidan could not be produced before the Appellate Bench and, therefore, the Appellate Bench has rejected his application on the ground that, the delay is not satisfactorily explained by the Petitioners.

4 The Petitioners have produced on record medical papers of Master Zidan aged about 8 years 6 months, issued by TATA Memorial Hospital, Mumbai, indicating that, a large fairly well-circumscribed lobulated heterogeneously enhancing mass is seen involving the right lobe of the liver.

It is thus clear that, there is substance in the submission made by the learned Counsel for the Petitioner that, son of the Petitioner No.2 was suffering from liver tumor. That medical papers clearly indicate that, son of Petitioner No.2 was under medical treatment at TATA

Memorial Hospital, Mumbai.

5 In view thereof, I am inclined to condone the delay caused in filing the Appeal against Order dated 17th November, 2018 before the Appellate Bench of Small Causes Court, Mumbai, subject to condition that, the Petitioners shall pay costs of Rs.5,000/- (Rupees Five Thousand only) to TATA Memorial Hospital, Mumbai, within a period of three weeks from today.

It is made clear that, the payment of aforestated costs by the Petitioners within the said stipulated period, is a condition precedent to condone the delay.

6 It is further made clear that, this Court has not dealt with the merit of the order dated 17th November, 2019 passed below Exh. 18 in Obstructionist Notice No.767 of 2015 in Execution Application No.477 of 2015 in T. E. & R Suit No. 64/77 of 2005, and the Appellate Court will consider the same on its own merits. Contentions of both the parties are expressly kept open.

7 Writ Petition is allowed in the above terms.

(A.S.GADKARI,J.)