

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

**FIRST APPEAL (ST.) NO.9295 OF 2021
WITH
INTERIM APPLICATION NO.2916 OF 2021
WITH
INTERIM APPLICATION NO.2917 OF 2021**

Varad L. Ullal ...Appellant/Applicant
vs.
Dolonchampa Ajoy Kumar Sen and Another ...Respondents

Mr. Kapil Shetye, for appellant/applicant.
Ms. Jennifer Michael a/w. Mr. Jayesh Gawand i/b. Dhiren Shah, for
respondent Nos. 1 and 2.

CORAM : N. J. JAMADAR, J.
DATE : DECEMBER 20, 2021

P.C.:

- . Heard the learned counsel for the applicant.
2. This interim application No. 2916 of 2021 is taken out to condone the delay of 135 days in preferring the appeal against the judgment and decree passed by the learned Judge, City Civil Court on 5th October, 2019 in Suit No. 8493 of 1995.
3. In the application, it is averred that the delay occurred as the applicant/appellant is a senior citizen and had been suffering from many ailments and had open heart surgery in the intervening period. It is further asserted that further delay was caused on account of exigency of the situation which arose due to Covid 19 pandemic. The applicant has a strong case on merits and if the

delay is not condoned and appeal is not heard on merits, the applicant would suffer serious prejudice.

4. The respondent Nos. 1 and 2 have resisted the application by filing affidavit in reply. The justifiability of reasons ascribed in the application for condonation of delay is contested. The claim of the applicant that he could not prefer the appeal on account of ailments is stated to be not borne out by the record as the medical papers indicate that the applicant was not hospitalized or availed the treatment, post the impugned judgment.

5. An affidavit in rejoinder is filed on behalf of the applicant, to which certain documents are annexed in support of the claim that the applicant continued to be prevented from filing appeal on account of ailments.

6. It could be legitimately urged that the material on record does not conclusively demonstrate that after the passing of the impugned decree the applicant was hospitalized. Nonetheless the fact remains that the applicant is an octogenarian. The applicant had been suffering from multiple ailments and availed treatment in immediate proximity of the passing of the impugned decree. Moreover, the situation which arose on account of Covid 19 pandemic cannot also be lost sight of.

7. It is trite that an application for condonation of delay should

receive liberal consideration. The overarching principle is that the procedure which is a handmaid of justice should not be allowed to score a march over the substantive justice. From this stand point, in the absence of want of bonafide or intentional delay, an application for condonation of delay, receives liberal consideration.

8. Applying the aforesaid principles to the facts of the case, I am satisfied that sufficient cause is made out for condonation of delay.

9. Thus to advance the cause of substantive justice, the application deserves to be allowed. However, to address the aspects of inconvenience and delay caused to the respondent Nos. 1 and 2, it may be appropriate to award costs.

Hence, the following order.

ORDER

- 1] The application stands allowed.
- 2] The delay in preferring the appeal stands condoned subject to payment of costs of Rs. 5,000/- to respondent Nos. 1 and 2 by the applicant within a period of two weeks.
- 3] The application stands disposed of.
- 4] The appeal be listed for admission on 18th January, 2022.

(N. J. JAMADAR, J.)