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

**INTERIM APPLICATION NO. 3523 OF 2019
IN
FIRST APPEAL (ST) NO. 30555 OF 2019**

Mr. Andrew Ignatius

...Applicant/
Appellant

Versus

Anthony Derek Rebello

...Respondents

Mr. Santosh Vishwakarma, for the Applicant/Appellant.

Mr. Kunal Bhange, a/w Abhijit Patil & Yash Joglekar, for
Respondent no.1

CORAM: N. J. JAMADAR, J.

DATED : 6th OCTOBER, 2021

PC:-

1. This application is preferred to condone the delay of 447 days in filing appeal against the judgment and decree in LC Suit No.331/2015, dated 25th July, 2018, passed by the learned Judge, City Civil and Sessions Court, Greater Bombay.

2. By the said decree, the predecessor in title of the appellant was ordered to handover the peaceful and vacant possession of the flat situated on the ground floor, Joseph Mansion, College Lane, beside Portuguese Church, Dadar (West), Mumbai, to the plaintiff within a period of three months thereof.

3. In the application, it is averred that the predecessor in title of the applicant was not aware of the proceedings before the

trial Court and on account of no contest on behalf of the defendant, the suit came to be decreed. The applicant has a very good case on merits. If the delay is not condoned, the applicant would suffer an irreparable loss.

4. The application is resisted on behalf of the respondent – original plaintiff by filing Affidavit-in-reply. The locus of the applicant to assail the decree is questioned. In any event, according to the respondent, there is no sufficient cause to condone the delay.

5. I have heard Mr. Vishwakarma, the learned Counsel for the applicant and Mr. Bhange, the learned Counsel for the respondent – plaintiff. Perused the material on record.

6. Evidently, the suit proceeded without written statement of the original defendant. The claim of the applicant that the applicant was not aware of the passing of the decree, if viewed through the aforesaid prism, cannot be said to be unreasonable. There does not seem any deliberate inaction or want of bonafide. It is trite that the Courts lean in favour of the condonation of delay so as to advance the cause of substantive justice. The application for condonation of delay thus receives a liberal consideration.

7. In the case at hand, for the reasons assigned in the application and the attendant circumstances, especially the fact

that the decree came to be passed for no contest on behalf of the defendant, it would be expedient in the interest of justice to condone the delay, so as to provide an opportunity to the applicant to agitate the issue on merits.

8. Hence, I am inclined to allow the application. Thus, the following order:

: O r d e r :

- (i) The application stands allowed in terms of prayer clause (a) subject to payment of costs of Rs.5,000/- by the applicant to the respondent, within two weeks from today.
- (ii) Appeal be registered.

[N. J. JAMADAR, J.]