

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

**INTERIM APPLICATION NO. 175 OF 2021
IN
FIRST APPEAL (ST) NO. 506 OF 2021**

Akshay Sanjay Pagare

...Applicant

vs.

Jyoti Datta Wagh

...Respondent

Mr.Dushyant S. Pagare for Applicant.

CORAM : ANIL S. KILOR, J.

DATED : 25 JANUARY 2022

PC. :

Heard Mr.Pagare, learned Counsel for the Applicant. None for the Respondent.

2. Mr.Pagare, learned Counsel for the Applicant, submits that the delay of 465 days has been caused in filing the first appeal challenging the judgment and decree dated 1 August 2019 passed by the Bombay City Civil Court at Mumbai in Summary Suit No.512/2019 decreeing the suit exparte against the Applicant and thereby directing the Applicant to pay to the Plaintiff amount of Rs.3,06,816 along with interest at the rate of 18% p.a. from the date of filing of the suit till final realisation.

3. It is submitted that as the suit was decreed exparte behind the back of the Applicant and no notice was served upon the Applicant, therefore, the Applicant was not having any knowledge about any such proceeding, however, on 12 July 2019, when the amount was deducted

from the salary of the Applicant, he got the knowledge of the impugned judgment and decree passed in the proceeding filed by the Respondent. The Applicant thereafter took steps and the appeal was filed. However, the delay of 465 days has been caused in filing the appeal. Hence, this application.

4. It is submitted that the delay is not intentional but bonafide and therefore, it is prayed that the delay may be condoned.

5. After considering the controversy involved in the present proceeding and in view of the admitted fact that the suit was decreed exparte and the money was directed to be recovered from the Applicant, I am of the opinion that the Applicant should get one opportunity to defend his case, more particularly, in the peculiar facts and circumstances as stated by learned Counsel for the Applicant that no notice was served upon the Applicant of the summary proceeding.

6. Furthermore, in the absence of any reply filed to the present application or disputing the facts stated in the application, I am of the considered view that the sufficient cause is shown by the Applicant for condonation of delay.

7. Accordingly, I pass the following order :

ORDER

(i) The application for condonation of delay is allowed. The delay caused in filing the first appeal is condoned.

(ii) The office is requested to register the first appeal and place the same before the court for admission.

(ANIL S. KILOR, J.)