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

**CIVIL APPLICATION NO. 187 OF 2016  
IN  
FIRST APPEAL (ST) NO. 1707 OF 2016**

Mr. Mahesh Ashoodomal Meghnani ...Applicant

*Versus*

Mr. Shailesh Ajimal Doshi ...Respondent

Mr Alizain Patel, i/b Jamshed Ansari for the Applicant.

**CORAM Madhav J. Jamdar, J.**

**DATED: 21<sup>st</sup> April, 2022**

**PC:-**

1. Heard Mr. Alizain Patel, learned Counsel appearing for the Applicant.
2. By this Civil Application, the Applicant seeks condonation of delay of 1 year and 267 days in filing the First Appeal.
3. Office noting dated 21/06/2019 notes that the sole Respondent is duly served.
4. This Court by the order dated 26th June 2019 granted leave to the Applicant to file additional affidavit. Thereafter this Court on

7th August 2019 recorded statement of the learned Counsel for the Applicant that copy of the additional affidavit is already served on the Respondent and granted time to file affidavit of service.

5. This Civil Application is adjourned from time to time for compliance of the said order dated 7th August 2019. It appears that in the meantime Mr.Navin R. Tiwari, learned Counsel appearing for the Applicant expired on 30th July 2020. Thereafter Mr.Alizain Patel, learned Counsel has filed appearance for the Applicant.

6. Mr.Alizain Patel, learned Counsel states that although in the Court records, affidavit of service filed by the earlier Advocate late Mr.N.R.Tiwari is not found, copy of said affidavit of service is found in the brief of late Mr.N.R.Tiwari. Copy of said affidavit of service is taken on record and marked “X” for identification.

7. It is stated in the Civil Application that the impugned judgment and decree is exparte decree. It is stated that the Applicant was not aware about the passing of the impugned judgment and decree. In the additional affidavit dated 19th July 2019 it has been stated as follows :

“1(b) Appellant was unaware of the order passed by the trial Court when he got the information when the Respondent achieved order of Attachment of his residential flat by way of filing the execution Application in the trial Court. Appellant immediately

filed Chamber Summons No.2085/15 & Notice of Motion No.649/15 for setting aside the exparte decree dt.21.01.2014 in Summary Suit No.146/2013, which were dismissed by the Ld.Trial Court on 18/11/2015. Hereto Annexed and marked as Exhibit-A is the copy of Chamber Summons No.2085/15 & Notice of Motion No.649/15 for setting aside the exparte decree dt.21.01.2014 in Summary Suit No.146/2013, which were dismissed by the Ld.Trial Court on 18/11/2015.”

8. The sole Respondent although served has chosen not to appear and has not filed any reply controverting the contentions raised in the Civil Application No.187 of 2016 as well as the additional affidavit dated 17th July 2019. The contentions raised in the Civil Application and additional affidavit therefore have remained uncontroverted.

9. In view of the facts and circumstances of this case, the Civil Application is allowed in terms of prayer clause (a).

**(Madhav J. Jamdar, J.)**