

Chaitali

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO. 1920 OF 2018

WITH

CIVIL APPLICATION NO. 1921 OF 2018

IN

FIRST APPEAL (ST.) NO. 5226 OF 2018

WITH

FIRST APPEAL (ST.) NO. 5226 OF 2018

Sharafat Ali Ansari

...Applicant/
Appellant

Versus

Vicar Of Saint Francis Xavier Church And Ors.

...Respondents

Mr. Prashant D. Patil for the Applicant.

Mr. Anil D'souza for Respondent No.1.

CORAM : R.I. CHAGLA J

DATE : 29TH NOVEMBER, 2022

ORDER :

1. Heard the learned Advocate appearing for the parties.
2. By the Civil Application, the Applicant is seeking condonation of delay of 3 years and 69 days in filing the First Appeal.
3. Upon perusing the averments in the Civil Application, there is

no satisfactory explanation as to delay in filing the First Appeal other than in paragraph 5 of the Civil Application, it is stated that settlement talks were going on between the Appellant and Respondent No.1. There is no mention as to when the settlement talks commenced. The Appellant has only stated that in the last week of January, 2018, the Appellant consulted his Advocate and that the Appellant's Advocate suggested to file the Appeal.

4. It is well settled including by the decision of the Supreme Court in **Majji Sannemma @ Sanyasirao vs. Reddy Sridevi & Ors.**¹, that the expression "*sufficient cause*" cannot be liberally interpreted in exercise of discretion to condone the delay if negligence, inaction or lack of bona fides is attributed to the party. The discretion to condone delay has to be exercised judiciously based on facts and circumstances of each case. The gross delay as in the present case being over 3 years is for which no sufficient cause has been shown and accordingly, relief sought for in Civil Application cannot be granted.

5. In any event, the Appellant whose suit was dismissed by the Lower Court and whose claim in the suit was that they were owner of

¹ Civil Appeal No. 7696 of 2021 judgment dated 16.12.2021

the suit property by adverse possession continues to remain in possession of the suit property and it would be for the Respondent/Defendant No.2 to take appropriate action in accordance with law for eviction of the Appellant. In view thereof, there is no case of prejudice made out by the Appellant, if the Civil Application is not allowed.

6. Civil Application No. 1920 of 2018 is accordingly, dismissed with no order as to costs.

7. In view of this order, Civil Application No. 1921 of 2018 and First Appeal (St.) No. 5226 of 2018 do not survive.

[R.I. CHAGLA J.]