

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

CIVIL APPLICATION NO. 3568 OF 2019

in

FIRST APPEAL STAMP NO. 11782 OF 2019

M/s. Bengal Mills and Stores Supply Co.

....Applicant/
Appellant

Versus

M/s. Kalpataru Power Transmission Ltd.

....Respondent

Mr. Nitesh Butekar along with Mr. Aniket Nangare along with
Ms. Gargi Warunjikar, Advocate for the Applicant/Appellant.
Mr. Akshay Udeshi along with Mr. Saurabh Deorukhkar i/b. M/s.
Sanjay Udeshi and Co., Advocates for the Respondent.

CORAM : S. G. DIGE, J.

DATE : 19th DECEMBER, 2022.

P.C. :

1. Heard learned counsel for the applicant and learned counsel for the respondent.

2. Learned counsel for the applicant submits that the applicant has challenged the judgment and order dated 3rd January, 2019 passed by the Bombay City Civil Court at Bombay thereby dismissing the suit of the plaintiff i.e. present applicant. The applicant had applied for certified copy of the impugned judgment

and order on 9th January, 2019 and the same was received on 15th January, 2019, therefore, there is a delay in filing the present appeal. Learned counsel further submits that the applicant is the only partner, who is looking after the legal matters of the applicant's firm and he was busy in one Apex Court time-bound matter pending before the Bombay City Civil Court at Bombay in Court Room No.31, wherein the applicant was appearing as witness and his cross-examination was going on day-to-day basis. Therefore, delay caused in filing the first appeal. Learned counsel further submits that the applicant had furnished instructions to challenge the impugned order to his advocate around 2nd week of February, 2019. Thereafter, the said advocate had prepared draft first appeal, however, due to illness, the applicant had failed to finalise the same within time. The applicant is a senior citizen who is 67 years old and is suffering from old age ailments, hence, there is delay of 65 days in filing the first appeal, it be condoned.

3. Learned counsel for the respondent tenders copy of the affidavit-in-reply filed on behalf of the respondent across the bar. The same is taken on record.

4. Learned counsel for the respondent strongly objected to condone the delay on the ground that there is no proper explanation for condonation of delay. The matter was not going on before the City Civil Court on day-to-day basis. Though, the applicant has stated that he had fallen ill, but, no documents in respect of his ailments are produced along with the application, it shows that this ground taken as an afterthought. Hence, requested to dismiss the application. Learned counsel further submits that the applicant had stated that there is 65 days delay but there is 71 days delay in filing the first appeal.

5. I have heard both learned counsel. Admittedly, the suit of the applicant is dismissed by the Bombay City Civil Court. The applicant wants to challenge the said impugned order, however, the applicant could not file the first appeal within stipulated time. The applicant had applied for certified copy of the judgment immediately after passing of the order but he received the certified copy belatedly i.e. after 7 days' delay. The applicant was busy in other matter pending before the Bombay City Civil Court and he acted there as a witness. The applicant is a senior citizen, he was ill during the said period. In my view, these are sufficient grounds to condone the

delay. Moreover, as per the provisions of the Limitation Act, there is 90 days' time for filing appeal but the order is passed by the City Civil Court at Bombay and as per the Bombay City Civil Court Rules, the time prescribed for filing appeal is 30 days.

6. Considering the above facts, if heavy cost is imposed on applicant, it would meet the ends of justice. I pass the following order :

1. The application is allowed subject to payment of cost of Rs.5,000/- by the applicant to the other side within three weeks.
2. The appeal be registered.

Civil application stands disposed of.

(S. G. DIGE, J.)