

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

WRIT PETITION NO.6773 OF 2022

Shri. Harishankar Dharmraj Mishra & Anr. ..Petitioners

Versus

Smt. Bhanumati H. Yadav and Ors. ..Respondents

Adv. Vikram Garewal i/b. Kripashankar Dubey for the Petitioners
Mr. E. K. Sasidharan a/w. Adv. Eram Siddiqui for the respondent
nos. 1 to 7

CORAM : NITIN W. SAMBRE, J.

DATED : 5th AUGUST, 2022

P.C.:

1. Heard.
2. The challenge in the petition is to the order dated 08/04/2022 passed by the Court of Small Causes at Mumbai whereby the application for condonation of delay in preferring an appeal being Appeal against the judgment and decree passed in RAE & R Suit No. 834 of 2001 came to be rejected.
3. The facts necessary for deciding the present petition are as follows:
4. The respondents/plaintiffs filed RAE & R Suit No. 834 of 2001 alleging to be the owner of the suit property. It is claimed that the present petitioners are tenants in the said property who remained

in arrears of rent as they have failed and neglected to pay the same, the decree for possession was sought. The said suit came to be decreed vide judgment and order dated 22/08/2019.

5. The petitioners/defendants feeling aggrieved preferred an appeal along with the Marji Application for condonation of delay. In the said application, the petitioners have claimed that the delay caused is unintentional and bonafide. So as to substantiate the said claim, the petitioners have in categorical terms raised various grounds amongst other are, petitioners are the legal heirs of the defendant who was original tenant. It is claimed that during pendency of the suit their father i.e. original tenant expired and after they having brought on record, the lawyer has failed to inform about the development in the suit proceedings.

6. It is further claimed that only after the receipt of the notice on 09/04/2021 in Execution Application No. 43/2021, they were made aware about the decree passed in RAE & R Suit No. 834 of 2021 on 22/08/2019. It is further claimed that the original appellant no. 1 (she expired on 17/10/2018), the appellant no. 1 (a) expired on 27/11/2020 and the elder sister of the applicant/appellant expired on 29/03/2021. It is also claimed that in view of Covid lockdown, the appeal could not be preferred

within time.

7. Learned counsel for the respondent nos. 1 to 7 has opposed the prayer before the Court below on the ground that there is no sufficient cause so as to condone the delay as the same is not at all explained.

8. As a sequel of above, the Appellate Court has rejected the prayer for condonation of delay by rejecting the Marji Application.

9. I have appreciated the aforesaid contentions of the counsel for the petitioner in support of condonation of delay viz. three deaths in their family, after passing the decree in question, they were not having knowledge about the decree in question, and the fact that the commencement of lock down because of Covid Pandemic. The fact remains that the decree was passed by 22/08/2019. In that view of the matter, the appeal ought to have been preferred within a period of 30 days pursuant to the schedule 116(b) of the Limitation Act.

10. It appears that after the certified copy was collected by the petitioners, the petitioners ought to have initiated appeal proceedings immediately thereafter. However, this Court is also required to be sensitive to the fact about the commencement of lock down from March, 2020 in view of Covid pandemic.

11. The Court below while passing the order impugned has noticed that there is delay of about 820 days out of which the delay in between 23/03/2020 till filing of the Appeal even it is ignored, the rest of the delay is not explained.

12. The law on the issue of condonation of delay is well settled. It is only after the satisfaction of the Court that there exists sufficient cause, the delay can be ordered to be condoned.

13. The case in hand, it is not in dispute that the petitioner's mother has expired on 27/02/2020 and his sister on 29/03/2021. As such, it can be noticed that the petitioner appears to be busy with management of the family after three casualties. Apart from above, the fact remains that the Apex Court so also this Court has extended the period of limitation during lock down period because of Covid-19 pandemic.

14. As such, in my opinion there is sufficient cause given by the petitioners to explain the delay which the Court below has failed to appreciate. In the aforesaid background, in my opinion order impugned is not sustainable and is liable to be quashed and set aside.

15. As such, the order impugned dated 08/04/2022 passed in Marji Application No. 42 of 2021 in Appeal (ST) No. 229 of 2021 is

hereby quashed and set aside.

16. The said Marji Application stands allowed subject to cost of Rs.50,000/- i.e. Rs.25,000/- per year. The aforesaid cost be deposited before the Appellate Court in any case by 14/11/2022. Subject to deposit of the aforesaid cost, the hearing of the appeal is expedited. It is directed that the appeal of the petitioners be decided within a period of six months by 31/05/2023.

17. Needless to clarify that the respondents/decreed holders shall be entitled to withdraw the cost.

18. The petition stands allowed in aforesaid terms.

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(NITIN W. SAMBRE, J.)