

Sonali

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL APPLICATION NO. 2329 OF 2018
IN
FIRST APPEAL (ST) NO. 13014 OF 2018

Mr. Abbas Abdulali Patel & Ors. ...Applicants

Versus

J. M. Financials Limited ...Respondent

**SONALI
MILIND
PATIL**

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Date: 2022.05.18
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Mr. Dhaval A. Patil, i/b M/s. K. Ashar and Co, for the
Applicants.

Mr. Shilpan Gaonkar, a/w Ms. Aditi Phatak & Kirti Ojha, i/b
Bombay Litigation & Corporate Co., for the Respondent.

CORAM Madhav J. Jamdar, J.
DATED: 21st April 2022

PC:-

1. Heard Mr. Dhaval Patil, the learned counsel appearing for the Applicants and Mr. Shilpan Gaonkar along with Ms. Aditi Phatak for the Respondent.

2. Mr. Gaonkar states that Bombay Litigation & Corporate Co. has instructions to appear in the matter and they will file the Vakalatnama within a period of 7 days from today.

3. This Civil Application is for condonation of delay of 356 days in filing the First Appeal. The First Appeal is filed challenging the judgment and decree dated 23rd February, 2017 passed by learned Judge, City Civil Court, Greater Mumbai in Suit No.3491 of 2011.

4. Mr. Patil submitted that the impugned judgment and decree is dated 23rd February, 2017. Thereafter, the Applicant filed Notice of Motion No. 1938 of 2017 seeking review of the impugned judgment and decree. The said Notice of Motion was dismissed on 19th December, 2017. He submitted that certified copy of the said order was received on 4th January, 2018 and thereafter, the present First Appeal is filed on 16th April, 2018. He submitted that the Applicants were under the bonafide belief that the limitation to challenge the impugned judgment and decree is 90 days and therefore, there is delay in filing the First Appeal.

5. Mr. Shilpan Gaonkar along with Ms. Aditi Phatak, learned counsel for the Respondent strongly opposed the Civil

Application. It is submitted that adequate reasons are not set out in the Civil Application.

6. Perusal of the record shows that the impugned judgment and decree is dated 23rd February, 2017. The Applicants filed proceedings seeking review of the said judgment and decree by filing Notice of Motion No. 1938 of 2017. The said Notice of Motion was taken out on 24th April, 2017 and the same was rejected on 19th December, 2017. The certified copy of the said order was received on 4th January, 2018. It is stated that the Applicants were under the impression that the limitation was of 90 days. Even if that 90 days period is excluded, then also there is delay of about 12 days in filing the Appeal.

7. However, in the facts and circumstances of the case and considering that the delay is not inordinate and as considerable period of delay is consumed in prosecuting the review proceedings, I am satisfied that the delay is required to be condoned.

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

9. The Civil Application is disposed of in the above terms.

(Madhav J. Jamdar, J.)