

Sharayu Khot.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

INTERIM APPLICATION NO. 17003 OF 2022

IN

FIRST APPEAL NO. 922 OF 2015

Maki Arjundas Shroff & Ors.

...Applicants

Versus

Durga Mohan Co-op.Hsg.Soc.Ltd.

...Respondent

Mr. Ashish Ghadge i/by M/s. Tamhane & Co. for the Applicants.

CORAM : R.I. CHAGLA J

DATE : 22 November 2022

ORDER :

1. Heard learned Advocate appearing for the Applicants/original Appellants.

2. By this Interim Application, the Applicants are seeking condonation of delay of 140 days in filing the Interim Application as well as for recall of conditional order dated 26th June 2019 insofar as rejecting the First Appeal on the ground that the private paper

book was to be filed within one year, failing which First Appeal shall stand dismissed without referring back to the Court and First Appeal is to be restored to file.

3. The Applicants have stated that the First Appeal had initially come up before this Court on 28th October 2015, when this Court had directed the Registry to accept compilation of documents and directed the Respondent to file separate compilation of cross examination of the witnesses within four weeks from the order dated 28th October 2015.

4. The Applicants have referred to the letter dated 2nd November 2015 addressed by the Advocates for the Appellants to the Registrar General of this Court for taking on record the paper book prepared by the Applicants.

5. The Appellants accordingly, filed paper book on 2nd November 2015. The Applicants further states that this Court by order dated 26th June 2019 admitted the First Appeal and had directed the Appellant to file paper book within one year with copy to other side failing which First Appeal shall stand dismissed without

referring back to the Court.

6. It is stated by the Applicants that at that time, inadvertently, it remained to be pointed out to this Court that the compilation of documents and paper book had already filed.

7. The Applicants has thereafter stated that during Covid 19 pandemic the period of one year for filing private paper book by the Appellants expired. In view of the order of the Supreme Court passed during the Covid 19 pandemic, there was extension of period of limitation which had been extended till 28th February 2022. It is during this period that the Appeal stood dismissed.

8. Having considered the averments in the Interim Application as well as noting that by order dated 26th June 2019, this Court had granted one year to the Appellant to file paper book, failing which First Appeal shall stand dismissed without referring back to the Court and upon expiry of one year, the First Appeal stood dismissed.

9. It is further noted that one year period expired during

Covid 19 pandemic lockdown and that by the order of the Supreme Court, limitation was extended for the period from 15th March 2020 till 28th February 2022 and limitation would commenced from 1st March 2022.

10. Thus, in my view, order of rejection of the First Appeal appears to be erroneous, as the rejection is during the period of relaxation of limitation. Further, considering that the paper book had already been filed by the Appellants as can be seen from the letter dated 2nd November 2015 to the Registrar General of this Court annexed at Exh.2 to the Interim Application.

11. The fact of filing of paper book had not been pointed out by this Court and in view thereof, the conditional order dated 26th June 2019 was passed insofar for filing of this paper book. I further find that there has been satisfactory explanation given for the delay in filing the present Interim Application. It is stated that the Appellants learnt of the dismissal of the First Appeal on 14th July 2022 during the listing of an Appeal From Order in the present matter filed by the Respondent.

12. Accordingly, relief sought for in the Interim Application is being granted. Hence, the following order is passed :-

- (i) Delay of 140 days in filing Interim Application is condoned.
- (ii) The conditional order for filing of the paper book within one year from 26th June 2019, failing which First Appeal shall stand dismissed without referring back to the Court, is recalled and the First Appeal No. 922 of 2015 is restored to file.
- (iii) Interim Application is accordingly, disposed of.

[R.I. CHAGLA J.]