

K.S. Jadhav

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

CIVIL REVISION APPLICATION NO. 440 OF 2022

Jyotsna Prakash More

**...Applicant
(Original Defendant)**

Versus

Sumati Shashikant Mane

**...Respondent
(Original Plaintiff)**

Mr. B. Reis i/b Sandeep D. Rankhambe, Advocate for Applicant.

Mr. Harish R. Pawar, Advocate for Respondent.

CORAM : R.I. CHAGLA, J.

DATE : 19th DECEMBER, 2022.

ORDER :

1. By this Civil Application, the Applicant has impugned the order dated 29th June, 2022 passed by the Appellate Bench of the Small Cause Court at Mumbai in M.A.R.J.I. No.19 of 2022 in Appeal (Stamp) No.35 of 2022 in L.E. Suit No.54 of 2016.

2. Narrow conspectus of the matter is that M.A.R.J.I. Application which had sought to invoke Section 5 of Limitation Act to condone 12 days delay caused in filing appeal against Judgment and Decree dated 1st February, 2020 in L.E. Suit No.54 of 2016 was rejected. The

reason for rejection is that the delay was not of 12 days but it is of around 2 years.

3. Upon reading of the impugned order of the Appellate Bench, it appears that the Appellate Bench had taken into consideration the period which was excluded by the Apex Court in order dated 10th January, 2022. During this period, the Appeal had been filed with delay of 12 days prior to the commencement of the period. The period of extended limitation is from 15th March, 2020 till 28th February, 2022. The Appeal was filed on 12th January, 2022 which was within the extended period of limitation. Thus in my view, the Appellate Bench was in error in stating that the delay was not of 12 days beyond the statutory period of 30 days, but was around 2 years.

4. Considering that there has been delay of 12 days in filing of the Appeal (Stamp) No.35 of 2022 in which M.A.R.J.I. No.19 of 2022 had been filed for condonation of delay, the Appellate Bench should have considered such delay and condoned the same by imposing costs if required.

5. Accordingly, the impugned order of the Appellate Bench dated 29th June, 2022 is set aside and remanded back for consideration of

the M.A.R.J.I. No.19 of 2022 as well as costs to be imposed for condoning the delay. Hence, the following order is passed :

- i) The impugned order dated 29th June, 2022 is set aside.
- ii) M.A.R.J.I. Application No.19 of 2022 is remanded back to the Appellate Bench for consideration of 12 days delay in filing the appeal against Judgment and Decree dated 1st February, 2020 in L.E. Suit No.54 of 2016 passed by the Judge presiding over Court No.21 by which the suit was partly decreed to deliver vacant possession of the suit premises.
- iii) The Appellate Bench of Small Causes Court is requested to decide the M.A.R.J.I. No.19 of 2022 in accordance with the above observations and if necessary to impose cost.
- iv) The Civil Revision Application is accordingly disposed of.

[R.I. CHAGLA, J.]