

Sharayu Khot.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

INTERIM APPLICATION NO. 30152 OF 2022

IN

FIRST APPEAL (ST) NO. 27443 OF 2022

Modilal Bapna & Anr.

...Applicants

Versus

New Mother India Co-operative Housing
Society Limited & Ors.

...Respondents

Mr. Rahul Kedar i/by Siddharth Shenoy for the
Applicants/Appellants.

Mr. Yogesh C. Naidu a/w Mr. Souptik Mukherjee for the Respondent
Nos. 1 to 4.

Mr. Sanil Gada for the Respondent No. 5.

Mr. J.N. Jain for the Respondent No. 6.

Mr. Santosh Parad for the Respondent Nos. 7, 8 and 9 (MCGM).

Mr. Y.Y. Dabke, AGP for the Respondent-State.

CORAM : R.I. CHAGLA J

DATE : 21 December 2022

ORDER :

1. By this Interim Application, the Applicants/Appellants
are seeking condonation of delay in filing the First Appeal.

2. The Applicants state that there is a delay of 71 days in preferring the First Appeal. The Applicants have stated that they are senior citizens and Applicant No. 1 has been diagnosed with acute pain in the knees and advised against travelling frequently. Doctor's diagnosis and treatment and X-Ray Report dated 3rd October 2022 has been annexed. Applicant No. 2 is residing in Rajasthan and executed a power of attorney in favour of his brother in law Mr. Motilal Jain on 30th April 2022 authorising to file legal proceedings on behalf of the Appellant No. 2. The power of attorney-holder is also senior citizen and travels rarely given the widespread of Covid 19 pandemic. It is accordingly, stated that the Applicants there was delay in filing the First Appeal, in view of the Applicants consuming few days in approaching the advocate and for providing papers and proceedings pertaining to the file of the First Appeal.

3. The Application is vehemently opposed by Mr. Naidu, learned Advocate for Respondent Nos. 1 to 4. He has referred to his Affidavit dated 13th December 2022. He has stated that there is no proper reason given in the Interim Application for condonation of delay other than stating that the Applicant No. 1 was under treatment for acute pain in the knees and for which Doctor's

certificate and X-Ray Report has been annexed. He has submitted that from a perusal of the Doctor's Report at Exh.A, it can be seen that the date of the Report is 4th May 2022 and there is only medication prescribed. Further, there is reference to the dates of 10th September 2022, wherein some additional medication has been advised. There is also Doctor's certificate of 3rd October 2022. He has submitted that these dates are not relevant as they do not fall within the relevant period when the First Appeal was to be filed i.e. the period from 20th July 2022 till 30th August 2022. He has further submitted that the Applicants were during the time of alleged illness, personally attending the Civil Suit No. 4635 of 2022, which was filed on 20th May 2022 and regularly appearing in the City Civil and Additional Sessions Court in Mumbai. He has referring to the case status which is at Exh.C to the Affidavit in Reply. He has also submitted that the Doctor's certificate which has been relied upon is not in the form as prescribed in the Indian Medical Council (Professional Conduct, etiquette & Ethics) Regulation, 2002, in particular Appendix-2, wherein the Form of Certificate Recommended for Leave or Extension or Communication of Leave and for Fitness has been prescribed.

4. I have considered the submissions. In my view, the objection raised to the relief being sought for viz. condonation of delay in filing the First Appeal if upheld would amount to precluding the Applicants/Appellants from exercising their remedy of First Appeal. Satisfactory reasons have been given in the Interim Application with regard to the Applicant No. 1 being unable to travel and for which Doctor's certificate relied upon. Though, the certificate was issued prior to the period for filing the First Appeal, there are subsequent certificates and it appears from the Doctor's certificate that there was regular medical treatment of Applicant No. 1 for the osteoporosis. Further, the Applicant/Appellant No. 2 is a resident of State of Rajasthan and had issued power of attorney in favour of his brother in law informing about these proceedings who is also a senior citizen and rarely travelled during the ongoing Covid 19 pandemic. In view thereof, I am of the view that these are satisfactory reasons for the delay in filing the First Appeal. Hence, the following order is passed. :-

- (i) Delay of 71 days in filing the First Appeal is condoned and Interim Application is disposed of accordingly.
- (ii) First Appeal shall be numbered and taken on file.

- (iii) List the First Appeal along with Interim Application No. 30153 of 2022 on 13th January 2023 for admission.
- (iv) Respondents are permitted to file Affidavit in Reply to the Interim Application on or before 7th January 2023.
- (v) Copy of the Affidavit in Reply shall be served in advance on the Applicants.
- (vi) Liberty to the Applicants to file Affidavit in Rejoinder thereto prior to the next date.

[R.I. CHAGLA J.]