

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

**CIVIL APPLICATION NO. 280 OF 2018
IN
FIRST APPEAL NO. 1032 OF 2013**

Smt. Javalben Jethalal Kamalia
(since deceased through legal heirs) :

Ashvin Jethalal Kamalia Applicant

v/s.

Shri. Narottam Parag Patel and anr. Respondents

Ms. Rukmini Khairnar i/b. Mr. P.N. Joshi for the Applicant.

Ms. Pramila S. Bhaingade for the Respondents.

CORAM: SMT. ANUJA PRABHUDESSAI, J.

DATED : 14th NOVEMBER, 2022.

P. C. :-

. By this Application, the Applicant has sought to condone the delay of 03 years and 43 days and to restore the Appeal which was dismissed for non filing of the paper book.

2. Heard Ms. Khairnar, learned counsel for the Applicant and Ms. Bhaingade, learned counsel for the Respondents.

3. Learned counsel for the Respondent has opposed the Application mainly on the ground that the Applicant has filed this Application after inordinate delay of 03 years. Learned counsel for the Respondent

states that the Applicant has not made out sufficient cause for condoning the delay.

4. I have perused the records and considered the submissions advanced by the learned counsel for the respective parties.

5. The records reveal that the First Appeal was admitted on 29/09/2014. Directions were given to the Appellant to file paper book within a period of two years. The Appellant was put to notice that failure to file the paper book would render the dismissal of the Appeal. The Appellant failed to file paper book within the stipulated time resulting in dismissal of the Appeal.

6. It is stated that the learned counsel representing the Appellant had instructed the registered clerk Mr. Sandesh Jadhav to prepare the paper book and file the same. The said clerk left the advocate's office and did not file the paper book within the stipulated time. The Appellant as well as his advocate were under a bonafide belief that the paper book was already filed. It was only when the Appellant inquired about the progress of the Appeal and checked computerized record, he came to know that the Appeal was dismissed for non compliance of the conditional order. Learned counsel for the Applicant states that the

paper book will be filed in the Registry within a period of one week from today with copy to the other side.

7. It is well settled that in delay condonation matters, the approach should be liberal and justice oriented rather than technical and pedantic approach. The explanation offered by the Applicant is genuine, bonafide and factually correct. Hence, it would not be in the interest of justice to dismiss the Application. Hardship and inconvenience, if any, caused to the Respondent can always be compensated by imposing costs.

8. In the light of the above, the delay is condoned. Application is allowed. Appeal is ordered to be restored to file subject to payment of costs of Rs.20,000/- to be paid to the Respondent. Paper book to be filed within one week from the date of the order.

9. Application stands disposed of.

PREETI
H JAYANI

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by PREETI H
JAYANI
Date: 2022.11.16
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(SMT. ANUJA PRABHUDESSAI, J.)