

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

**NOTICE OF MOTION (APPEALS) NO. 929 OF 2019
IN
APPEAL (L) NO. 556 OF 2018
ALONG WITH
INTERIM APPLICATION NO. 472 OF 2022**

KML Estates Private Limited

.. Appellant

v/s.

Darryl D'monte And Ors.

.. Respondents

...

Mr. Ashraf Ahmed Shaikh a/w. Ms. Divya Sharma i/by Mr. Diwakar Singh, for applicant/appellant.

Mr. Mukul Tally a/w. Ms. Sayali Gharpure i/by S. Mahomedbhai And Co., for the respondent no.1 and 2.

Mr. Aspi Chinoy, Senior Advocate i/by Ms. Rohini Pandit, for respondent no.4 and original defendant no.2A.

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**CORAM : K. R. SHRIRAM &
KAMAL KHATA, JJ.**

DATED : 30TH NOVEMBER, 2022.

P.C. :

NOTICE OF MOTION (APPEALS) NO. 929 OF 2019

1. This application is for condonation of delay of 12 days. At the outset

Mr. Taly submitted that by an order dated 9th March 2020, applicant was directed to pay a sum of Rs.1,500/- as costs to Kirtikar Library on or before 13th March 2020 and place on record receipt to that effect, failing which application would stand dismissed without referring back to court.

2. Mr. Taly submitted that his instructions are that till 13th March 2020, no amount had been deposited and therefore by virtue of the self operating order, interim application will not survive.

3. Mr. Shaikh appearing for applicant states, he has just came on record and to the best of his knowledge, his instructions are that everything has been complied with. At the same time he states that if for any reason, this amount has not been paid, he will pay Rs. 3000/-, i.e., double of Rs. 1500/- within one week from today. In view of this statement made, we are inclined to extend the time to deposit the amount, if not already paid, from 13th March 2020 till today. We are also conscious of the fact that soon 9th March 2020, the Covid-19 wave started, which put everything in disarray. We, however, make it clear that if this amount is not paid, the entire appeal itself stand dismissed without further reference to court with no chance of any extension being granted.

4. Considering the fact that the delay is only 12 days, in view of the explanation given in paragraph no.4 of the affidavit in support, delay condoned. Application disposed.

INTERIM APPLICATION NO. 472 OF 2020

1. This application is to bring on record the legal heirs of respondent No.1 and to delete respondent no.5 and in place of respondent no.5, add the name of Dr. Frazer Mascarenhas S. J. who is the new Trustee and also to add certain grounds in the appeal. Mr. Taly and Mr. Chinoy have no objection. Leave to amend is granted as per the schedule annexed to the application except consequential amendment mentioned in paragraph no.7. Application disposed.

2. At this stage Mr. Taly states, respondent no.2 Dr. Brian D'Monte has also expired and respondent no.2 has left behind two legal heirs and only one needs to be brought on record and the other does not wish to be brought on record, in view of the family arrangement between the siblings. The details of the only legal heir to be brought on record as provided by Mr. Taly is as under:

Name : Sunita Cecile D'Monte
Address : Sunita Cecile D'Monte
C/o. Samir D' Monte
Kinara, 29-B, Carter Road, Bandra (West),
Mumbai 400 050.

3. Amendment to be carried out and amended copy of appeal to be served within four weeks.

4. Stand over the Appeal to 18th January 2023 for admission.

(KAMAL KHATA, J.)

(K.R. SHRIRAM, J.)