

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

CIVIL WRIT PETITION NO.1242 OF 2023

Kundanmal Parasmal Jain
V/s.

...Petitioner.

Kamlaben Babulal Bhatt (Since decd.)

1 (a) Mr. Jagdish chandrakant Sevak & Ors.

...Respondents.

Ms. Sapna S. Krishnappa for the Petitioner.

Mr. Pradeep J. Thorat a/w. Ms. Nazia Shaikh i/b Ms. Aditi Naikare for the Respondents

CORAM : SHARMILA U. DESHMUKH, J.

DATE : 29th NOVEMBER, 2023.

P.C.:-

1. Heard.

2. The Petition takes exception to the order dated 28/12/2022 passed by the Appellate Bench of Small Causes Court in Marji Application No.293/2022 rejecting the petitioner's application for condonation of delay of 1038 days caused in filing appeal.

3. The Application for condonation of delay was preferred in Appeal against the judgment dated 19/7/2019 determining the *mesne* profits in Mesne Profit Application No.627/2012. It is pleaded that

although the impugned judgment was passed on 19/7/2019, on 8/7/2019 the petitioner had taken his father to Rajasthan for medical treatment and thereafter on 6/9/2019 he returned to Mumbai. On 13/11/2019, he had gone to Rajasthan for his son's marriage and on 20/1/2020 he returned to Mumbai. Thereafter on 30/1/2020, Petitioner had been to Rajasthan for marriage of a relative and had come back to Mumbai in February 2020. It is thereafter contended that the country was under lockdown due to pandemic. On 4/6/2020 the petitioner had lost his father and on 8/6/2020 he went to Ahmedabad and thereafter on 16/4/2022 the petitioner lost his grandchildren and as such delay was sought to be explained. The appellate Court considered the reasons cited in the application for condonation of delay and held that no sufficient cause has been shown and rejected the Application.

4. Learned counsel appearing for the petitioner submits that the reason for the delay of 1038 days caused in filing the appeal has been sufficiently explained. She would submit that in the interest of justice, delay be condoned and the petitioner be permitted to contest the matter on merits. She would further submit that in the mediation proceedings initiated by this Court, the petitioner has offered 50% of the *mesne* profit, which

proposal was rejected by the respondents.

5. *Per contra*, learned counsel for respondents submits that no sufficient cause has been shown for condoning the huge delay of 1038 days. He would further submit that in fact during the evidence the tickets produced in support of the case of travel would indicate that the tickets were in the name of some other person and not that of the petitioner.

6. It is not the case of the petitioner in the Application seeking condonation of delay that he was not aware of the passing of the judgment of the trial Court. It was within his knowledge that *mesne* profit has been determined and as such liability to pay *mesne* profit accrued unless the same was set aside by the appellate Court. Even if prior to passing of the judgment on 19/7/2019 he had been to Rajasthan for medical treatment of his father, he has returned to Mumbai on 6/9/2019. There is no explanation tendered as to why appeal could not have been preferred immediately when the petitioner returned on 6/9/2019 to Mumbai. The cause shown for the delay is the marriage of various family members. As the petitioner has attended the marriage ceremonies it cannot be said that he was prevented by any sufficient cause from carrying out his day to day affairs and as such

could have very well contacted his advocate and given instructions for filing of appeal. The provisions of Section 5 of the Limitation Act cannot come to the aid of a litigant who is negligent in pursuing his remedies. Although it is not necessary that each day's delay be explained, sufficient cause is required to be shown. The huge delay of 1038 days has not been explained and it cannot be said that there was any reason for this Court to adopt a liberal approach in the present matter. The conduct of the petitioner in attending all functions rather than adopting the necessary remedy for challenging the impugned order speaks volumes. This is not a fit case where discretion could be exercised in favour of the petitioner in the interest of justice rather the conduct depicts negligent attitude of the petitioner in dealing with the legal matters especially considering that the matter was serious as liability to pay mesne profits had been determined.

7. In view of the above, there is no infirmity in the impugned order. Petition stands dismissed.

(SHARMILA U. DESHMUKH, J.)