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IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 8336 OF 2023

Naziya Wasim Shaikh

...Petitioner

Versus

Gool Rusi Vatcha & Ors.

...Respondents

Ms. Vidhya N. Shet, i/b. Vaid & Associates, for the Petitioner.

Mr. Dharam Sharma, i/b. Dharam & Co., for Respondent No.1.

CORAM : MADHAV J. JAMDAR, J.

DATED : 7<sup>th</sup> JULY 2023

P.C. :

1. Heard Ms. Vidhya Shet, learned counsel appearing for the Petitioner and Mr. Sharma, learned counsel appearing for Respondent No.1.

2. In the present Writ Petition impugned order is dated 26<sup>th</sup> June 2023 in Marji Application No.116 of 2023 in Appeal (ST) No.529 of 2023 passed by the learned Appellate Court of the Small Causes Court.

By the impugned order dated 26<sup>th</sup> June 2023, the said Marji

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Application seeking condonation of delay of 7 days caused in filing the Appeal is dismissed. The said impugned order dated 26<sup>th</sup> June 2023 was not available when the petition was filed and therefore, learned counsel appearing for the Petitioner seeks leave to file the impugned order dated 26<sup>th</sup> June 2023. Leave granted. Amendment be carried out forthwith.

3. Perusal of the said Marji Application No.116 of 2023 shows that before filing the Appeal, the Petitioner has filed Revision Application No.147 of 2023 and the same was dismissed on the ground that the same is not maintainable as the Appeal is competent. Thereafter, the Petitioner has immediately filed the Appeal. However, during that process, there is delay of 7 days.

4. Perusal of the impugned order shows that instead of considering the reasons for delay, the learned Judge observed that in the application, the Petitioner has nowhere stated that she has good case on merits and inter alia discussed the merits cursorily and dismissed the Marji Application. The said approach of the learned Appellate Court is not legal and proper. It is settled legal position that, at the time of considering delay condonation application, merits of the case are not

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required to be considered. It is significant to note that reasons for the delay are not at all considered by learned Appellate Court.

5. Although Mr. Sharma, learned counsel appearing for Respondent No.1 strongly opposes, however the factual position on record clearly shows that the learned Court has not at all taken into consideration the reasons for delay condonation. Therefore, impugned order dated 26<sup>th</sup> June 2023 is set aside and the said Marji Application No.116 of 2023 is allowed by condoning the delay in filing the Appeal (ST) No.529 of 2023.

6. The Writ Petition is disposed of in above terms with no order as to costs.

**[MADHAV J. JAMDAR, J.]**