

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
INTERIM APPLICATION NO.13933 OF 2023
IN
APPEAL FROM ORDER NO.597 OF 2023**

Swapnil Shantaram Kawde and Anr. ... Appellants
versus
Chand Abdul Rehman Shaikh and Anr. ... Respondents

Mr. Nikhil Wable with Ms. Jasmeet Kaur i/by Jayakar and Partners, for Appellants.
Mr. V.R.Tripathi, for Respondent No.1.

CORAM: N.J.JAMADAR, J.

DATE : 2 AUGUST 2023

P.C.

1. Heard the learned Counsel for the parties.
2. Learned Counsel for Respondent No.1 – original Plaintiff seeks leave to tender an Affidavit in Reply to the Interim Application.
3. Leave granted.
4. Affidavit in Reply is taken on record.
5. The learned Counsel for the Applicants submits that the notice to Respondent No.2 could not be served and the postal envelope containing the notice is returned with the remark ‘unclaimed’.
6. The learned Counsel seeks leave to tender Affidavit of service.
7. Affidavit of service is taken on record.
8. The Respondent No.2 was the original Defendant No.3 in the suit. By

the impugned order, the learned Judge, City Civil Court considered it appropriate to restrain Defendant Nos.1 and 2 from interfering with and entering into the suit premises until the decision of the suit. Hence, the absence of Respondent No.2 would not be an impediment to hear and decide the Interim Application.

9. This application is preferred for condonation of delay of 145 days in preferring the appeal against an order dated 2 November 2022 passed by the learned Judge, City Civil Court in Notice of Motion No.2491 of 2022 in S.C.Suit No.1620 of 2022.

10. In the Application, it is averred that the mother of the Applicant was unwell and the Applicant No.1 being an Inflight Manager had to regularly travel within India as well as abroad and on account of his hectic schedule, the Applicant No.1 was unable to give instructions to the Counsel within the stipulated period. It is further averred that the Applicant No.2 could not give instructions as she has a five year old daughter and had to look after her mother. She was also required to attend her work at Gundecha Education Academy. The delay is stated to be unintentional.

11. An affidavit in Reply is filed on behalf of the Respondent No.1 – Plaintiff contesting the sufficiency of cause sought to be shown for delay in preferring the appeal.

12. It is trite, an application for condonation of delay is liberally construed so as to advance the cause of substantive justice. Some amount of indolence or

inadvertence is bound to exist in any application for condonation of delay. In the instant case, the applicants have ascribed certain reasons. There does not seem to be intentional or mala fide delay. In any event, the inconvenience caused to the Respondent No.1 – Plaintiff is such that it can be compensated in terms of money.

13. Hence, to advance the cause of substantive justice by promoting the decision of the appeal on merits, I am impelled to allow the application subject to payment of costs of Rs.20,000/- by the Applicants to Respondent No.1 within a period of two weeks from today.

14. The payment of costs of Rs.20,000/- shall be a condition precedent and, in the event of default, the application and the Appeal would stand dismissed without further reference to the Court.

15. Upon payment of costs, the Appeal be registered and listed for Admission on 5 September 2023.

16. The Interim Application stands disposed.

(N.J.JAMADAR, J.)