

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

**INTERIM APPLICATION NO. 13625 OF 2023
IN
FIRST APPEAL NO.56 OF 2019**

Sai Prasad Pandharinath Sarang ... Applicant

IN THE MATTER BETWEEN

Sai Prasad Pandharinath Sarang ... Appellant

Versus

Prabha Gracias (nee @ Kanchan
Prabha Pandharinath Sarang) ... Respondent

.....

Mr. Vikas Y. Murudkar, for the Applicant/Appellant.

Mr. O. Sankaran Kutty a/w Sanjay V. Palekar, for the Respondent.

.....

CORAM : PRITHVIRAJ K. CHAVAN, J.

DATED : 31st JULY, 2023.

P.C.

By an order dated 3rd October, 2019 while admitting the Appeal a self operative order was passed directing the appellant to file paper book within a period of one year. Since the appellant failed to file the paper book, the appeal came to be dismissed automatically after one year.

2 Learned Counsel for the applicant moved this application for condoning the delay of 498 days in filing the paper book and to restore the appeal to its file.

3 The reason assigned by the appellant is that the paper book ought to have been filed on or before 3rd October, 2020. However, due to the out break of COVID-19 Pandemic, a nationwide lock-down was declared and therefore, the counsel lost track of the Appeal and could not file the paper book in time. He further submits that the appellant has a good case on merits wherein chances of success are excellent.

4 While strongly opposing the prayers of the applicant, learned counsel for the respondent in his reply has given the particulars of the period in a table indicating that the delay has not been correctly calculated, which according to learned Counsel is 1362 days and, therefore, submitted that application be rejected for causing such a long delay, more particularly, in the light of the fact that the appellant is in possession of the subject matter.

5 Considering the fact that the period of one year elapsed during the nationwide lock-down pursuant to the out break of COVID-19 Pandemic, the delay is justified. However, the application for setting aside the said order could have been filed immediately thereafter. Normally, delays are condoned and the parties are allowed to prosecute the appeals on merits.

6 Learned Counsel for the respondent has not correctly calculated the delay, in the sense, he had added 365 days even for the period of one year which was granted to the appellant to file the paper book. Be that as it may.

7 For the aforesaid reasons, delay needs to be condoned, albeit, by imposing a cost of Rs.10,000/- which shall be paid to the respondent within two weeks.

8 Subject to deposit of costs as above, the delay is condoned and the appeal is restored to its original number.

9 Learned Counsel shall file paper book within two weeks thereafter, failing which, the appeal shall stand dismissed again without further reference to the Court.

10 List on **21st August, 2023.**

11 Appeal No. 465 of 2014 be tagged with this Appeal.

12 Since there is an element of settlement, learned Counsel for the parties have suggested the name of Mr. S. B. Munde, retired District Judge, as a Mediator.

13 As such, Mr. S. B. Munde, retired District Judge is appointed as a Mediator to conduct the process of Mediation.

14 The parties shall approach the learned Mediator on 10th August, 2023.

15 The learned Mediator shall thereafter fix the dates as per his convenience and convenience of the parties.

16 The parties shall co-operate in the process of mediation without interference of any of the advocates of the parties.

17 After the process of mediation, a report to that effect be submitted to this Court on or before 31st August, 2023.

18 Parties shall bear the charges/fees of the mediator in equal proportion.

[PRITHVIRAJ K. CHAVAN, J.]