

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
INTERIM APPLICATION NO.1986 OF 2023
IN
COMMERCIAL FIRST APPEAL (ST.) NO.21830 OF 2022**

Karan Sanghvi and Anr.Applicants/Appellants

Vs.

Paridhi Rohitkumar Shah and Ors.Respondents

Ms. Sharon Patole for applicants.

Mr. Vinay Taliwal for respondent no.1.

**CORAM : K. R. SHRIRAM &
RAJESH S. PATIL, JJ.**

DATED : 23rd MARCH 2023

PC. :

INTERIM APPLICATION NO.1986 OF 2023

1 The application is for condoning the delay of 100 days (as per the first set of appeal/123 days as per the second set of appeal/123 days as per applicants' counsel brief). The appeal is impugning a judgment passed on 14th March 2022 by the City Civil Court, Mumbai in Commercial Suit No.340 of 2021.

2 On 13th March 2023 we informed the counsel for applicants that we were not happy with the explanation for the delay given in the interim application. Applicants only state that some of their family members were facing serious health issues which required them to contribute their time and resources towards such family and personal commitment. Both applicants are not related to each other and are only business partners and

it is too much of coincidence to believe that family members of both these applicants were having serious health issues at the same time and both were busy contributing their time and resources towards such family and personal commitment. Applicant no.1 also states that he had to travel alongwith his family members and he was unable to make himself available. The further affidavit, which is filed by applicant no.1 and affirmed on 17th March 2023, also does not satisfactorily explain the delay. In the said affidavit (though affidavit states we applicant no.1 and applicant no.2, this affidavit is only signed and affirmed by applicant no.1) applicant no.1 states that they were facing severe financial setbacks and had no alternative but to concentrate their efforts to build and increase their business and income through other modes. Applicant no.1 states that he and applicant no.2 started investing and promoting their factory based in Daman which required them to travel often to ensure smooth running of the factory and its operations and during the months of March 2022 and April 2022 they both were required to spend considerable time at the factory at Daman since it was the financial year ending and they had to finalise the accounts and pass on instructions for filing returns. Thereafter, applicant no.1 states that applicant no.2 lost his brother on 27th August 2021 and applicant no.2 had to travel with his family to Mathura, UP for the first death anniversary of the late brother. A copy of the ticket is annexed. The ticket shows date of travel is 25th June 2022 but if it is the first death anniversary, then it should have been in August 2022 and not

June 2022. It is stated in the affidavit that soon after his return and it is not mentioned when they came back, applicant no.2 and his family started preparation for the engagement ceremony for his son scheduled in July 2022 at Ujjain, MP and in July 2022 they booked train ticket to travel to Ujjain.

3 In our view, these are all unacceptable excuses because the facts are available with the advocates and grounds of appeal are also drafted by advocates.

4 The Hon'ble Apex Court in ***Government of Maharashtra (Water Resources Department) represented by Executive Engineer V/s. M/s. Borse Brothers Engineers and Contractors Pvt. Ltd.***¹ has held that in a commercial matter where the object of speedy disposal is sought to be achieved under the Commercial Courts Act, the delay is to be condoned by way of exception and not by way of rule. The Apex Court has stated that in a fit case in which a party has otherwise acted bonafide and not in a negligent manner, a short delay beyond the time prescribed can, in the discretion of the Court, be condoned.

5 Though we may not say applicants did not act bonafide, we would certainly say applicants were grossly negligent and in a commercial matter, where the time prescribed is 30 days to file the appeal, 100 days is almost more than three times the time prescribed.

1. (2021) 6 SCC 460

6 In the circumstances, application is dismissed.

(RAJESH S. PATIL, J.)

(K. R. SHRIRAM, J.)