IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

INTERIM APPLICATION NO.14780 OF 2023
IN
WRIT PETITION NO.7215 OF 2018

Speedex Auto Garagespeedex Auto Garage ... Applicant.
Versus
Madhavlal N. Pittie and Anr. ... Respondents.

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Mr. Joel Carlos, Advocate for the Applicant.
Mr. Abhay Jadeja a/w. Mr.Arun Unnikrishnan i/by Jadeja & Satiya, Advocate for the Respondent.

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CORAM : SHARMILA U. DESHMUKH, J.
DATE : DECEMBER 19, 2023.

P. C.:

1. Interim Application has been preferred seeking to amend the Petition and bring on record the proposed respondent No.1A as the legal heir of the deceased-Respondent. The interim application also seeks condonation of delay of 5 years and 91 days caused in filing of the present application.

2. Learned counsel appearing for the Applicant submits that on 11th April, 2018, the Respondent No.1 expired and due to oversight the Applicant did not inform his Advocate in the High Court about the death of the sole-Respondent, as he was not aware that the

proceedings for bringing on record the legal heirs is also required to be adopted in the High Court. He submits that there is sufficient cause shown for condoning the delay in bringing the legal heirs of the deceased-Respondent on record. He submits that before the Small Causes Court, the application has been filed for repair of a small garage which is not yet repaired and as such, considering the merits of the matter, the application for condonation of delay ought to be allowed.

3. *Per contra*, learned counsel appearing for the proposed Respondent No.1A, who filed his affidavit-in-reply, vehemently opposed the Application. He submits that before the Small Causes Court, an application was filed for bringing the legal heirs of the deceased-respondent on record and the same came to be allowed vide order dated 17th October, 2018 and as such, the Applicant is well aware of the proceedings to be adopted. He further submits that after the death of Respondent in proceedings before this Court, the proposed Respondent has been appointed as an agent of the Receiver and as such, it cannot be said that the applicants were not aware of the procedural aspect of bringing the legal heirs on record.

4. The delay which is sought to be condoned in a collusal

delay of 5 years and 91 days. Although, it is not necessary that there has to be explanation for each day's delays, it is necessary for sufficient cause to be shown so that the power under Section 5 of the Limitation Act, 1963, can be exercised to condone the delay.

5. In the present case, in the interim application it is pleaded that the Applicant is a senior citizen and due to oversight, he did not inform his advocate and being layman, he was not aware that he has to bring this fact to the notice of his lawyer. This cause cannot be accepted for the reason that the Applicant is a partnership firm carrying on business and not some rustic villager or layman, who does not understand the procedural aspect of litigation. Further the suit has been filed in the year 2001 which is being duly prosecuted and as such, the Applicant is well aware of the procedural aspect of the litigation.

6. In any event, ignorance of law cannot be said to be an excuse and if there has been delay, there must be sufficient cause shown. In the present case, I do not find any cause much less sufficient cause being shown. It is not disputed that by order of 17th October, 2018, the Small Causes Court had permitted the legal heirs of the proposed respondent No.1 to be brought on record and further

in the proceedings before this Court, the proposed respondent has been brought on record as an agent of Receiver in place of the deceased-respondent.

7. In that view of the matter, the procedure to be adopted upon the death of the sole-respondent was well within the knowledge of the Applicant. The law of limitation may be harsh however, the same is required to be applied with full rigour except in cases which deserve the relaxation. In the present case, I do not find any reason to condone the substantial delay of 5 years and 91 days. Interim Application being devoid of merits is dismissed.

(Sharmila U. Deshmukh, J.)