



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

WRIT PETITION NO. 10969 OF 2023

Ranjana Surendra Sanghavi & Ors.

..Petitioner/s

v/s.

Leela Vijay Gad

..Respondent

Mr. Nirmun Sharma a/w. Vishnudutt Mishra I/b. Ashish Mishra for the
Petitioner/s.

Mr. D.C.Mehta for the Respondent.

**CORAM : ANUJA PRABHUDESSAI, J.
DATED : 8th SEPTEMBER, 2023.**

P.C.

1. The petitioner herein challenges order dated 2.8.2023 whereby the Appellate Bench of Small Causes Court, Mumbai, dismissed the application for condonation of delay, being Marji Application No.107 of 2023 filed in Appeal No.111 of 2022.

2. Heard Mr. Sharma, learned Counsel for the petitioners, and Mr. Mehta, learned Counsel for the respondent. Perused the records and considered the submissions advanced by the learned Counsel for the respective parties.

3. The records reveal that the appeal was listed for hearing on 25th

January, 2023, on which date the Advocate for the appellant failed to remain present. The learned Judge therefore dismissed the appeal for non-prosecution.

4. The petitioner herein filed an application for restoration of the appeal along with an application to condone the delay of 47 days in filing the application. The petitioner had stated that the Advocate for the appellant had failed to appear on 10th January, 2023 and hence they wanted to change the Advocate, and requested the Advocate to hand over the papers and proceedings. Accordingly, the previous advocate handed over all the papers to the petitioner, and the petitioner engaged a new Advocate. While the Advocate was in the process of filing his vakalatnama, he learnt that the petition was dismissed on 25th January, 2023 in view of non appearance of the earlier advocate on record.

5. The delay which is sought to be condoned cannot be considered as inordinate delay. It is well settled that the term 'sufficient cause' has to be construed liberally as to advance substantial cause of justice. An endeavor should be to decide the matter on merits, rather than to scuttle it on technicalities, unless there are valid and genuine reasons to show malafides or gross negligence on the part of the petitioner. The present case does not disclose gross negligence or malafides. The delay in filing the application as well as grounds of restoration appear to be

genuine and reasonable. Hence the Appellate Court was not justified in taking pedantic and hyper technical approach.

6. Hence, the application is allowed. The impugned order is set aside. The delay in filing restoration application is condoned. The appeal stands restored to the file. Both the parties to appear before the Appellate Bench on 3.10.2023 at 11.00 a.m.

(ANUJA PRABHUDESSAI, J.)