



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**SECOND APPEAL NO. 483 OF 2023
WITH CIVIL APPLICATION NO. 768 OF 2024
IN SA/483/2023**

**MS YASH ENTERPRISES A PROPRIETORSHIP FIRM THROUGH ITS
PROPRIETOR FAQRUDDIN HATIMBHAI RANGWALA**

VERSUS

**MS KUBER STEEL TRADERS THROUGH ITS PARTNER JITENDRA
RAMNIWAS AGRAWAL GARG**

Mr. M. G. Deokate, Advocate h/f Mrs. S. A. Dhumal (Tambat), Advocate
for the appellant

Mr. S. S. Patil, Advocate for the respondent

CORAM : R. M. JOSHI, J.

DATE : 16th JANUARY, 2024

P.C. :-

1. Heard.
2. This appeal is filed under Section 100 of the Code of Civil Procedure taking exception to the judgment dated 6th May, 2023 passed in Civil M.A. No. 21 of 2021 by the First Appellate Court wherein delay was caused of 1104 days in preferring appeal against the judgment and decree passed in Summary Suit No. 05 of 2015 dated 25th January, 2018.
3. Parties are referred to as plaintiff and defendant for the sake of convenience.
4. The facts which led to the filing of the present second appeal can

be narrated in short as under”

(i) The plaintiff filed summary suit for recovery of money on the basis of negotiable instrument. The said suit came to be decreed on 25th January, 2018. Since there was delay in filing of the appeal an application was filed for condonation of delay of 1104 days for condonation thereof defendant has claimed that he was suffering from heart disease since 2017 and was advised to undergo Coronary Angioplasty. He was further advised to take rest. He claims to be undergoing regular check up at Pune. He further claims that in the year 2019 he was required to stay at Pune due to his business activities and on account of his health issue. It is his further contention that he was prosecuting the criminal proceedings but he could not discuss about the progress of the suit or its decision with his advocate and both were under bonafide impression about knowledge of the same with defendant.

5. Learned counsel for the defendant submits that the First Appellate Court has failed to take into consideration the medical reasons given for the condonation of delay which was coupled with the evidence on record. It is his submission that delay was sufficiently explained and considering the health condition of the defendant the delay ought to have been condoned. According to him the liberal approach should be taken by the

Court in matters of condonation of delay. He further claims that a sum of Rs.15 lakhs is already deposited out of total amount involved in the cheques in question. According to him even no execution proceedings are initiated by the plaintiff and as such no prejudice will cause to the other side if delay is condoned and appeal is heard on merit.

6. Learned counsel for the plaintiff opposed the said contention and supported the impugned judgment.

7. No doubt the Court has to be liberal in condonation of delay, where the Court finds that the delay sought to be explained by the applicant is genuine and sufficient. Perusal of the application filed before the First Appellate Court indicates that though at one hand the applicant is claiming ill health to be a ground for not preferring the appeal in time but at the same time he claims that he was required to stay at Pune for his business activities. Apart from this there is no dispute about the fact that the applicant had attended the criminal proceedings initiated against him by plaintiff even in the year 2019. Meaning thereby the sickness did not prevent him from doing business or prosecuting other matters. This shows that the reason of medical illness sought to be taken up by the applicant is not genuine.

8. Learned First Appellate Court has taken into consideration the

medical evidence placed on record. The applicant is said to have undergone the Angioplasty on 5th January, 2017. Thereafter he is required to attend the Doctor for regular check up. Considering the facts and circumstances of case and period when he underwent angioplasty, the same would not become impediment for him or prevented him from filing appeal against the impugned judgment. Considering the overall circumstances appearing on record more particularly the application filed by the applicant himself shows that except for preferring the appeal against the impugned judgment and decree the applicant could do everything else. This Court, therefore finds that the medical reason sought to be given by the applicant for condonation of delay is not genuine nor satisfactory. Thus, no substantial question of law is involved herein as the First Appellate Court has considered the grounds raised in the application as well as the evidence placed on record and has passed reasoned order. Impugned order therefore cannot be termed on perverse. Hence, appeal stands dismissed. Pending application, if any, stands disposed of.

. **Later on.**

8. Learned counsel for the appellant seeks relief on the ground that the warrant of attachment is being executed against the appellant.

9. Since the appeal is dismissed on merits and since there was no interim relief granted in his favour, question of granting any relief at this stage, after dismissing appeal on merit, would not arise. Hence, his request stands rejected.

(R. M. JOSHI, J.)

ssp