



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

909 CIVIL APPLICATION NO. 4365 OF 2023
IN APPEAL FROM ORDER (ST) NO. 9629 OF 2023

SYED ISAQ SYED AHMED SAUDAGAR
VERSUS
SALEHA BEGUM SAYED EJAZ HUSAIN AND ANOTHER

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Mr. M.M. Khan – Advocate for Applicant
Mr. Hamza Khan I. Pathan – Advocate for Respondent No.1
Mr. A.R. Vaidya – Advocate for Respondent No.2

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CORAM : SANDIPKUMAR C. MORE, J.
DATE : 3rd January, 2024

PER COURT :

1. Heard learned Counsel for the rival parties.
2. The applicant – original respondent No.1 in R.C.A. No.146 of 2019 is seeking condonation of delay of 229 days in filing the Appeal from Order against the judgment and decree dated 06.05.2022 in the aforesaid appeal.
3. Learned Counsel for applicant submits that, the applicant is not having any legal knowledge and his advocate did not give him proper opinion for challenging the aforesaid order. Besides the learned Counsel for applicant submits that, applicant is 81 years old person and suffering from various

ailments.

4. On the contrary, learned Counsel for respondent No.1 i.e. original plaintiff/appellant strongly opposed the application on the ground that, the applicant had in fact made illegal construction which was to be raised by the respondent No. 2 – Corporation under the concerned notice. The suit was initially dismissed on the jurisdictional issue but it has been restored by the Appellate Court and the matter is now remanded back for fresh trial. As such, he prayed for dismissal of the application mainly because if the applicant is given chance to challenge the impugned judgment in the aforesaid appeal then indirectly his illegal construction will be protected for indefinite period.

5. On the other hand, learned Counsel for respondent No. 2 – Municipal Corporation, Aurangabad also opposed the application on the ground that, there will be unnecessary protection to the illegal activity by the present appellant.

6. Heard rival submissions. It appears that, if the delay condonation application is allowed then the alleged illegal

construction will remain there for indefinite period till the Appeal from Order is decided. Moreover, the reasons mentioned in the delay condonation application are also not proper. However, considering the statutory right of the applicant he needs an opportunity to contest the matter on merit. However, considering the conduct of applicant certain cost needs to be imposed upon him. As such, following order is passed :

ORDER

a. The application is hereby allowed and the delay of 229 days in filing Appeal from Order against the judgment and decree dated 06.05.2022 passed in R.C.A. No. 146 of 2019 is hereby condoned subject to cost of Rs.30,000/- (Rupees Thirty Thousands only) to be paid by the applicant to the present respondents in equal proportion within a period of one month.

b. The application is accordingly disposed of.

[SANDIPKUMAR C. MORE, J.]