



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

**CIVIL REVISION APPLICATION NO. 57 OF 2023
WITH
CIVIL APPLICATION NO. 4770 OF 2024**

1. Anusayabai Pratapsingh Patil,
Age : 65 Years, Occ. Floor Mill,
R/o. Plot No. 23, Adarsh Nagar,
Near Rustumji School, Jalgaon.

..Applicant
(Orig. Defendant)

VERSUS

1. Suresh Lekhraj Kukreja,
Age : 62 Years, Occ. Business,
2. Shenky Sureshkumar Kukreja,
Age : 35 Years, Occ. Business
3. Sagar Rameshlal Kukreja,
Age : 49 Years, Occ. Business
4. Vijay Rameshlal Kukreja,
Age : 39 Years, Occ. Business,

All Resident of Kanwar Nagar, Jalgaon, Respondents
(Orig. Plaintiffs)

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Advocate for the Applicant : Mr. A.R.Syed.

Adv. For Respondent Nos. 1 to 4 : Mr. M.M. Bhokarikar

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CORAM : SANDIPKUMAR C. MORE, J.

Judgment Reserved on : 08.07.2024.

Judgment Pronounced on : 07.08.2024.

Judgment :

1. The applicant. who is original defendant in R.C.S.
No. 103 of 2020, has challenged the judgment and order dated

20.03.2023 passed by the learned District Judge-6th Jalgaon in Civil Misc. Application No. 584 of 2022, whereby the application of the applicant for condonation of delay of 136 days in filing Regular Civil Appeal challenging the judgment and decree passed by the learned trial Court i.e. learned Jt. Civil Judge, Junior Division, Jalgaon in Regular Civil Suit No. 103 of 2020 dated 02.05.2022, is rejected.

2. The learned counsel for the applicant submits that the learned First Appellate Court has definitely erred in rejecting the application for condonation of delay filed by the present applicant/defendant. According to him, the original decree passed by the learned trial Court was an ex-parte decree and therefore, the learned First Appellate Court should have allowed the delay condonation application with view to give an opportunity to the applicant to contest her claim on merit by applying principal of natural justice. He also claimed that there was Standard Operating Procedure (S.O.P.) in force during the period of Covid-19 when the ex-parte order in the original suit was passed against the applicant. He pointed out that this Court had in fact issued guidelines to the learned trial Courts and the Appellate Courts for not to pass any adverse order during the aforesaid period. According to him, the learned First Appellate Court did not consider this aspect

and merely rejected her application because as per bailiff report, the appellant had refused to accept the suit summons.

He relied on the following judgments

- (i) High Court of Nagpur Bench in the case of **Prashant Gulab Rathod and others Vs. The State of Maharashtra and others** in *First Appeal (ST) Nos. 22555 and 22560 of 2019*
- (ii) Hon'ble Apex Court in the case of **Land Acquisition, Anantnag and others Vs. Katiji and Others** in Civil Appeal No. 460 of 1987

3. On the contrary, the learned counsel for the respondent supported the impugned judgment and order by mentioning that no sufficient cause was shown by the appellant for causing such delay. As such, he prayed for dismissal of the application. He relied on the following judgments :-

- (i) **Mohd. Sahid vs. Raziya Khanam,**
AIR 2018 SC 4724
- (ii) **Bijay Kumar Singh Vs. Amit Kumar Chamariya,**
AIR 2019 SC 5461
- (iii) **Union of India Vs. Shantiranjana Sarkar,**
AIR 2009 SC (Supp) 129
- (iv) **B.L. Sreedhar and others Vs. K.M. Munireddy (Dead)**
and others AIR 2003 S.C. 578

- (v) **Tata Iron and Steel Co. Ltd. Vs. Union of India,
AIR 2000 SC 3706**
- (vi) **Thiru John Vs. The Returning Officer and others
AIR 1977 SC 1724**
- (vii) **Hindustan Petroleum Corporation Ltd Vs. Dilbahar
Singh, AIR 2014 SC 3708.**
- (viii) **Suman Chadha Vs. Central Bank of India, AIR Online
2021 SC 476**
- (ix) **Shivaji Fakira Bhabare Vs. Dashrath Baburao Naik,
AIR Online 2022 Bom. 545**

4. Heard rival submissions. Also perused documents on record along with the citations.

5. On going through the impugned judgment, it appears that there was delay of only 136 days in filing appeal against the judgment and decree passed by the learned trial Court. It further appears that the learned First Appellate Court considered the reasons mentioned by the appellant for causing delay that she was totally unaware about the institution of the suit for possession of suit premises and got aware about the same only when the possession warrant was issued by the Executing Court and bailiff arrived at the suit premises for delivery of possession and thereafter observed that the applicant/defendant was well aware of the pendency of the

suit, since she herself refused to accept the suit summons and therefore, no proper cause is shown by her for condonation of delay. On going through the judgments relied upon by the learned counsel for the respondents, it is evident that the delay can be condoned on showing sufficient cause only. However, there are other judgments also as relied by the learned counsel for the applicant wherein this Court as well as Honb'ble Apex Court has consistently taken a view that the delay condonation applications are to be dealt with liberal approach.

6. Here in this case, the delay is not inordinate one, but the learned First Appellate Court has refused to condone the same merely because the applicant refused to accept the suit summons which was evident from the bailiff report. Therefore, the learned First Appellate Court observed that there was no sufficient cause for condonation of delay. However, it is equally important to note that the ex-parte order passed against the present applicant was in fact passed on 11.02.2021, when the Standard Operating Procedure due to sudden surge in Covid-19 cases all over the nation was in operation. As per the circular dated 23.02.2021, issued by this Court, the Judicial Officers were directed not to pass any adverse order owing to the absence of the Advocates, parties,

witnesses or accused persons. The said S.O.P. was in force w.e.f. 01.12.2020 until further orders. As such, it can be said that due to pandemic period of Covid-19, the present applicant could not remain present to contest the suit on merit and therefore, an ex-parte judgment was passed against her.

7. Further, it can be seen that during the pendency of execution proceeding, a possession warrant was issued against the present applicant, but when the bailiff went to suit premises for handing over the possession, she along with her children obstructed the same. The learned counsel for the respondents pointed out that the present applicant had in fact sought time to vacate the premises, but subsequently she filed this application before this Court. However, it is to be noted that this court had already stayed the execution proceeding vide order dated 18th April 2023 by continuing the order of learned First Appeal Court dated 21st March 2023 such, interim protection is still running against the respondents.

8. Under such circumstances, it appears that the impugned judgment and order passed by the learned First Appellate Court of rejecting the delay condonation application of the applicant is quite harsh. It should have considered the fact that the ex-parte order was passed against the applicant

during the operation of standard procedure and therefore, she could not get the opportunity of contesting the claim on merit. Even otherwise also, considering the fact that delay condonation application is to be dealt liberally, the learned First Appellate Court could have condoned the delay by imposing appropriate costs upon the applicant. In view of the same, the application stands allowed and the impugned judgment and order dated 20.03.2023 passed by the learned First Appellate Court in Civil Misc. Application No. 584 of 2022 is hereby set-aside and the learned First Appellate Court is directed to re-consider the application of delay condonation afresh on its own merit. The interim relief granted by the learned First Appellate Court vide order dated 21st March 2023 to continue till disposal of delay condonation application.

9. The present Civil Revision Application along with Civil Application No. 4770 of 2024 is accordingly disposed of.

(SANDIPKUMAR C. MORE, J.)

YSK/