

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

INTERIM APPLICATION NO.13049 OF 2023

IN

FIRST APPEAL (ST) NO.5789 OF 2023

Prudencia A. Fernandes : Applicant

IN THE MATTER BETWEEN

Prudencia A. Fernandes : Appellant

Vs.

Ivor Tellis & Ors. : Respondents

Adv. Rahul Kedar a/w Adv. Shraddha Jadhav i/by Aagam Doshi for the
Applicant.

Adv. P. P. Madhwani a/w Adv. Sneha Kudgaonkar for the Respondent No.1.

CORAM : KISHORE C. SANT, J.

DATE : 9TH FEBRUARY, 2024

PC. :

1. Heard learned Advocate for the Applicant & Respondent No.1.
2. None appears in spite of service on Respondent Nos.2, 3 & 4.
3. This Application is filed seeking condonation of delay of 333 days caused in filing in First Appeal. It is stated that the Applicant is old aged on person and is suffering from Dementia. Copy of certificate is annexed to the Application giving the opinion as, "Mild cortico-cerebral and cerebellar atrophy".
4. Learned Advocate for the Applicant therefore submits that

sufficient cause is made out to condone the delay. He also relied upon the judgment in the case of *Nilesh Vijay Deshmukh and Another Vs. Mathurabai Bhikanrao Deshmukh & Ors.*, reported in 2005 SCC OnLine Bombay 764. It is held in the said judgment that word 'sufficient cause' needs to be construed liberally. It is not necessary to give explanation for day of the delay. He further relied upon the judgment in the case of *M. K. Prasad Vs. P. Arumugam*, reported in (2001) 6 SCC 176. The Hon'ble Supreme Court's held that a discretion under Section 5 of the Limitation Act needs to be exercised to advance substantial justice.

5. Learned Advocate for the Respondents vehemently opposes the Application stating that there is no proper explanation of delay. The Applicant has to explain each days delay. He prays for rejection of the Application.

6. Considering that this First Appeal is in respect rights of the property. This is a decree of partition in respect of the joint family property. This Court finds that sufficient cause is made out to condone the delay.

7. Condonation Application is thus allowed and disposed of.

(KISHORE C. SANT, J.)