

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

**INTERIM APPLICATION NO. 3133 OF 2023
IN
FIRST APPEAL (ST) NO. 25935 OF 2021**

Vijay Nandlal Trivedi And Anr.

... Applicants/Appellants

Vs.

Nitin Arvind Oza And Ors.

... Respondents

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Adv. Ganesh Suresh Padte, for the Appellants/Applicants.

Adv. Vishwajeet Kapde, Adv. B. N. Jadhav, i/by Rustamji & Ginwala, for the
Respondents Nos. 1 to 4.

CORAM : KISHORE C. SANT, J.

DATE : 2nd May, 2024

PC:-

1. Heard the parties. This Application is for restoration of the Appeal by setting aside the Registrar's Order by which the Appeal came to be dismissed for default, dated 23.09.2022.

2. There is delay of 129 days. A prayer is therefore also made for condonation of delay. It is stated in the Application that the Applicant was not well in July-2022 and was admitted in the hospital. He was discharged on 31.07.2022. Therefore he could not be immediately recover and file this Application. He submits that there is no intention to cause the delay and same deserves to be condoned.

3. The learned Advocate for the Respondent vehemently opposes

the Application stating that the appeal itself is filed after more than 6 years. Even after filing of the appeal after such delay the Applicant did not prosecute the matter. The delay is not properly explained. He submits that the Application deserves to be dismissed.

4. Heard both the parties. Considering that the Applicant for sometime was admitted in hospital and he is more than 70 years of age, he was not in a position to move the Court. This Court is inclined to allow the Application.

5. The Application is therefore allowed and disposed of.

6. Delay stands condoned. The proceeding stands restored to its original position subject to removal of office objections within four weeks.

(KISHORE C. SANT, J.)