

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

INTERIM APPLICATION NO.20238 OF 2022
IN
SECOND APPEAL (STAMP) NO.22726 OF 2022
WITH
IA/20239/2022 IN SA(ST)/22726/2022

Abdul Mohammed Khalil Chaudhary & anr. ... Applicants.
Versus
Smt. Neerabai Ratan Patil & anr. ... Respondents

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Mr. Vzair Kazi, a/w. Ms. Dhanashree Hublikar i/b. YMK Legal for
Applicant & Org. Appellants.

Mr. Mandar Limaye, for Respondent Nos.1 & 2.

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CORAM : SANDEEP V. MARNE, J.

DATED : 06 FEBRUARY 2024.

P.C. :

This Application is filed seeking condonation of delay in filing Second Appeal. According to Appellant, the delay is of 457 days excluding the period from 15 March 2020 to 28 February 2022 on account of various Orders passed by the Apex Court in view of Covid-19 pandemic suspending the period of limitation. On the other hand it is the case of Respondents that the delay is of 1171 days.

2. I have heard Mr. Kazi, the learned counsel appearing for Applicants and Mr. Limaye, the learned counsel appearing for respondents.

The Application is opposed by the Respondents on the ground that the delay in filing the Appeal is inordinate and cannot be condoned.

3. I have gone through the averments made in the Application. It is averred that the period of limitation to file Second Appeal came to an end on 26 June 2019. Applicants contend that they had engaged an advocate for the purpose of filing of the present Appeal and they were under impression that the said advocate would take necessary steps for filing of the Appeal. It further pleaded that on account of Covid-19 pandemic, no steps could be taken for filing of the Appeal after 15 March 2020. That the Covid-19 restrictions continued till 28 February 2022. The Applicants thereafter approached another advocate and this is how the Appeal has been filed in September 2022.

4. For seeking condonation of delay, Applicants have essentially pleaded twin reasons viz. (i) failure on the part of their advocate to take steps for filing of Appeal and (ii) Covid-19 pandemic. In ordinary course, a litigant cannot be permitted to blame the advocate for causing of delay in filing proceedings. Litigants are required to be vigilant about exercising timely remedies. Therefore in ordinary course this Court would not be justified in condoning the delay which occurred upto 15 March 2020 when there were no restrictions for filing of the proceedings. Mere because the restrictions were subsequently imposed after 15 March 2020, the same cannot be a reason for excluding the entire period from 15 March 2020 to 28 February 2022 while computing the delay in filing Appeal. Even after 01 March 2022 the Appeal was not lodged with the Registry and came to be lodged only in September 2022. Be that as it may. Considering the nature of dispute between the parties

of the Order that I proposed to pass in the Second Appeal, in my view the delay in filing the present Appeal deserves to be condoned. The Interim Application is accordingly allowed. Delay in filing Second Appeal is condoned. Interim Application is disposed of.

SANDEEP V. MARNE, J.

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