

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

INTERIM APPLICATION NO.30085 OF 2022
IN
CIVIL REVISION APPLICATION NO.510 OF 2022

Ramashankar Bansraj Mallah ...Applicant

V/s.

Mrs. Bansarajidevi Wd/O. Lalji

Mallah (Since Dec.) K. L.

Mallah (Dec.)Thr. Smt.

Durgavti K. Mallah ...Respondent.

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Mr. H. P. Panday for Applicant.

None for Respondent.

CORAM : RAJESH S. PATIL, J.

DATED : 30 JANUARY 2024

P.C.:

1. This Interim Application is filed seeking to condone the delay in filing the Civil Revision Application. It is the case of the applicant that by way of Appeal No.568 of 1997, the applicant had challenged the concurrent findings recorded by the Small Causes Court in L. E. Suit No.302/435 of 1979.

2. However, in view of the order dated 19 April 2007

passed in Writ Petition No.1307 of 2001, the said Petition was disposed of with liberty to file the Civil Revision Application under Section 115 of the Code of Civil Procedure, which was to be filed within a period of four weeks. It was further held that the period of pendency of the Petition will be taken into consideration for condonation of delay in filing the Civil Revision Application.

3. Mr. Panday submits that the appellant was not aware about the order dated 19 April 2007 till 1 December 2010 when he received notice to appear before the Court on 16 December 2010. Thereafter, the appellant through his advocate Mr. M. P. Vashi, took out a civil application for setting aside the order dated 19 April 2007 and prayed that he may be allowed to file the civil revision application by extending the time. The said Civil Application No.794 of 2011 was disposed of by this Court by its order dated 9 June 2022 by permitting the applicant to prefer civil revision application. Pursuant to the said order, the present Civil Revision Application was filed on July 2022 and the interim application was filed on 7 July 2022 for condonation of delay in filing the civil revision application.

4. By order dated 15 March 2023, this court issued notice

to the respondents.

5. Mr. Panday submits to this Court that the notices have been served on Respondent Nos. 2 (a) and 2 (b), who are the contesting parties, being the original Plaintiff. Mr. Panday submits that Respondent No.3 as also Respondent Nos. 1, 2, 4 and 5 have expired. affidavit of service dated 8 January 2024 has been filed on behalf of the applicant to prove that private notice has been served on Respondent No.2 (a) and 2 (b). In spite of service, the contesting respondents have not remained present on the last occasion when the matter was called out. Therefore, the matter was kept for today. Today also, when the matter is called out, nobody appears on behalf of the Respondents. Therefore, the matter is proceeded in the absence of contesting respondents.

6. Heard. I have gone through the contents of the application. I am satisfied that the Applicant has made out a case for condoning the delay. Hence, the delay is condoned and the Application is allowed in terms of prayer clause (a).

7. The Interim Application stands disposed of.

(RAJESH S. PATIL, J.)