

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

**INTERIM APPLICATION NO. 2474 OF 2019
IN
CIVIL REVISION APPLICATION (ST) NO. 28762 OF 2019**

Shri. Abdul Khaliq Mohd. Yahkub ...Applicant

Versus

Shri. Shabbir Abbasbhai Miyajiwalla (since deceased) Thr. Lrs. Mrs. Sameena Shabbir Meeyanjiwala and Ors. ...Respondents

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Mr. Joel Carlos for the Applicant.
Mr. Siddharth Ronghe for the Respondents.

**CORAM : M.M.SATHAYE, J.
DATE : 15th FEBRUARY 2024**

PC. :

1. This is an application for Condonation of Delay of 253 days in filing the above Civil Revision Application by the Applicant/Tenant.
2. Heard learned counsel for the parties. Perused the application & reply.
3. It is the case of the Applicant that the impugned Judgment and Decree was passed on 26.11.2018 by the Appeal Court of which certified copies were received by him on 21.02.2019. The present application is filed on 17.12.2019. The reason given for delay is that after obtaining certified copy, the Applicant was in dilemma as to

whether he should file further proceeding or not. It is contended that the Applicant was not on good terms with his brother, due to which he was unable to decide on preferring present application or not. It is further contended that the Applicant approached several advocates to decide further course of action when some suggested to file Review Application and some suggested to file Writ Petition. It is therefore submitted that the Applicant was confused as to which course of action he should adopt in order to challenge the impugned order.

4. The Respondents/landlord have filed affidavit-in-reply affirmed on 29.03.2022, strenuously opposing delay condonation. It is contended that the reason offered by the Applicant cannot be accepted as justifiable reason on any count. It is submitted that indulgence should not be shown to a litigant like the Applicant, who has openly come out with the case of dilemma as stated in paragraph 7 in the application. It is contended that the reason regarding health of the Applicant offered in paragraph 9, is too vague to be accepted and the same also runs contrary to the reasons offered in earlier paragraphs.

5. Learned counsel for the Respondents invited this Court's attention to the impugned Judgment and Order for limited extent of pointing out that along with the Applicant, his brother (Tasavoor Abdul Khalik Siddiqui) had also filed separate appeal challenging the same impugned Judgment and Decree. It is submitted that if the Applicant and his brother were already prosecuting separate appeals

challenging the same order, there is absolutely no question of being on good or bad terms with the brother, so as to be unable to decide to file present application.

6. Having heard learned counsel for the parties and on perusing the reasons, it must be noted that the reason of dilemma is far from a convincing reason. The provision of law under Section 5 of the Limitation Act, 1963 which permits a party to satisfy the Court that he had sufficient cause for not preferring a certain proceeding within time, cannot be interpreted in aid of the litigant who himself is not sure about putting up a challenge. The next reason given by the Applicant about not being on good terms with brother and therefore, being unable to decide, is stated only to be rejected. It has to be held so, in the teeth of the fact that this Applicant and his brother Tasavoor both had filed separate appeals challenging the same impugned order, which were heard together and decided under the common judgment. If the Applicant could file a separate appeal and prosecute the same independent of his brother, it does not lie in the mouth of such Applicant that he was unable to decide about putting up a challenge, on account of being on good or bad terms with his brother. This submission could have been considered, if the Applicant and his brother were co-appellants in the appeal prosecuting it together, but the same is not the case.

7. The next reason about contacting various advocates and being advised different remedies and therefore being confused, cannot be accepted because it again indicates the Applicant's dilemma. Had he

filed any proceedings, his act would have spoken for his intention. The next averment made by making a general statement of not keeping in good health etc. is not at all supported by any material and as such deserves to be rejected too.

8. It has to be borne in mind that the reasons offered for this delay will have to be weighed against valuable rights which have accrued to the Respondents/landlord for seeking possession of the subject matter property, which is a commercial property in the form of a shop on the ground floor of House No. 2435, G.T. Road, Pune, admeasuring 200 sq. ft. within the limits of Pune Cantonment Board. Though it is true that while deciding the delay condonation application, the merits of the matter cannot be gone into, the uncontroverted position of fact that Respondents/landlord have been held entitled for recovery of their property on multiple grounds which are now sought to be questioned belatedly, cannot be ignored.

9. Hence, in the peculiar facts and circumstances narrated above, the application is devoid of merits and the delay is not properly explained. This is not a fit case for exercising any discretion in favour of the Applicant. The application is accordingly rejected. No order as to costs.

10. At this stage, learned counsel for the Respondents has placed on record an affidavit contending that the subject matter property is kept closed even today. The said affidavit is taken on record.

11. All concerned to act on duly authenticated/digitally signed copy of this order.

[M.M.SATHAYE,J.]