

rrpillai

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO. 475 OF 2024
WITH
INTERIM APPLICATION NO. 11147 OF 2024**

Mehboob Sikandar Mulla ... Appellant/Applicant
through Power of Attorney
Irfan Mehboob Mulla
Vs.
Khatal Allabaksh Mulla ... Respondent

Mr. Anand Patil for the Applicant.
Mr. Saurav N. Katkar i/b. Mr. Amar D. Parsekar for the Respondent.

CORAM : GAURI GODSE, J.

DATE : 25th NOVEMBER 2024

ORDER :

1. Heard learned counsel for the parties. The Second Appeal raises following substantial questions of law :

- (i) Whether the reasons given by the First Appellate Court in dismissing the application for condonation of delay would amount to hyper technical approach while deciding the application for condonation of delay ?
- (ii) Whether the First Appellate Court ought to have considered that rejection of the application for condonation of delay would have adversely affected the appellants'

substantive rights, hence whether it was necessary to take liberal approach in deciding the application for condonation of delay ?

2. Learned counsel appearing for the respondent waives notice of final disposal of the Second Appeal on the aforesaid questions of law.

3. Heard learned counsel for the parties. Learned counsel for the appellant submits that in the application for condonation of delay, the appellant had prayed for condonation of delay of 220 days. He submits that the period of 220 days includes the limitation period of 60 days. He thus submits that the delay in filing the First Appeal was only 144 days. He submits that the delay had occurred only due to illness of the appellant. To support his reasons for illness the appellant relied upon two medical certificates. He submits that since due to illness the appellant was unable to take steps to challenge the trial court's decree, the appellant executed a power of attorney in favour of his son. He submits that through the power of attorney appellant filed the First Appeal. He further submits that in view of the unavoidable situation regarding the appellant's illness there was delay of 144 days in filing the First Appeal.

4. Learned counsel for the appellant submits that the First Appellate Court has decided the application on a hyper technical view by giving reasons that the medical certificate advised the appellant only one month's bed-rest. He submits that the two medical certificates produced on record would show that the appellant was unwell since June 2023. He further submits that there was no reply filed to the application to oppose the reasons or dispute the medical certificates relied upon by the appellant. He thus submits that the approach of the First Appellate Court amounts to a hyper technical approach by completely ignoring the appellant's submissions that the substantive right of the appellant would be affected if delay is not condoned. He thus submits that the question of law framed by this court be answered in favour of the appellant.

5. Learned counsel appearing for the respondent submits that though reply was not filed, the respondent objected to the medical certificates. He submits that the first medical certificate relied upon by the appellant is regarding illness from 5th June 2023 to 5th July 2023. He submits that the second medical certificate is of October 2023. He submits that thereafter only with an intention to create a ground for condonation of delay the appellant executed a power of attorney on 12th October 2023. He thus submits that the entire

period of delay is not explained by the appellant. He thus submits that no fault can be found in the reasons given by the First Appellate Court for rejecting the application for condonation of delay.

6. To support his submissions learned counsel for the respondent relied upon the decision of the Apex Court in the case of *Pathupati Subba Reddy (Died) by LRs and Others vs. The Special Deputy Collector (LA)*¹. He submits that the Hon'ble Apex Court has settled the legal principles for deciding the application for condonation of delay. He submits that the parameters laid down for condonation of delay cannot be disregarded. He thus submits that for want of any sufficient ground for condonation of delay the appellant is not entitled to seek condonation of delay. He submits that the legal principles settled by the Apex Court are squarely applicable to the submissions made on behalf of the respondent to oppose the condonation of delay. He thus submits that the question of law framed by the court be answered in favour of the respondent. He submits that no fault can be found in the approach of the First Appellate Court and the reasons would not amount to any hyper technical approach.

7. To consider the submissions made on behalf of the parties I

¹ [2024] 4 SCR 241

have perused the papers of the Second Appeal. There is no dispute that the delay is of only 144 days in filing the first appeal. Appellant has supported his grounds regarding illness by producing two medical certificates. Authenticity of the two medical certificates are not disputed by the respondent by filing any reply. There is no reply filed on behalf of the respondent to oppose the reasons in the application for condonation of delay.

8. A perusal of the medical certificate indicates that the appellant was ill since June 2023. The second medical certificate on October 23 indicates that the appellant's illness continued. The power of attorney executed on 12th October 2023 shows the steps taken by the appellant. The delay occurred in filing the first appeal does not appear to be intentional. Execution of the power of attorney by the appellant in favour of his son shows that all attempts were made by the appellant to file the first appeal.

9. Thus, the reasons recorded by the First Appellate Court referring to only the medical certificate of October 2023 indicates that the First Appellate Court has not properly appreciated the pleadings and supporting documents produced by the appellant. The reasons stated by the Appellate Court regarding preparation of the impugned decree and the summer vacation shows that the First

Appellate Court failed to properly appreciate the reasons for condonation of delay.

10. The two medical certificates and the power of attorney supports the grounds raised for condonation of delay. The reasons stated by the appellant for condonation of delay thus are genuine and there is no reason to disbelieve the grounds raised on behalf of the appellant.

11. The legal principles settled by the Apex Court provides for a liberal approach and justice oriented approach to be kept in mind for deciding the application for condonation of delay. In the facts of the present case neither delay is inordinate nor any negligence is seen on behalf of the appellant. The steps taken on behalf of the appellant shows due diligence on the part of the appellant. Thus the legal principles settled by the Apex Court supports the grounds raised on behalf of the appellant.

12. The reasons recorded by the First Appellate Court for rejecting the application for condonation of delay amounts to taking a hyper technical approach by disregarding the reasons stated in the application for condonation of delay supported by medical certificates and the power of attorney. Hence for the reasons stated

above, the questions of law are answered in favour of the appellant.

13. The appellant is entitled to condonation of delay on the ground of his illness. The execution of the power of attorney in favour of the appellant's son and filing the application for condonation of delay along with the first appeal through his power of attorney shows the due diligence on the part of the appellant for taking steps to file the first appeal.

14. Hence, for the reasons stated above the second appeal is allowed by passing the following order :

(i) The impugned order dated 23rd January 2024 passed by the learned District Judge-1, Gadhinglaj in Civil Miscellaneous Application No. 37 of 2023 is quashed and set aside. Civil Miscellaneous Application is allowed.

(ii) The concerned District Judge-1, Gadhinglaj is directed to register the First Appeal and decide the same on merits.

15. Second Appeal is allowed in the aforesaid terms.

16. In view of the disposal of the Second Appeal, Interim Application No. 11147 of 2024 is disposed of as infructuous.

[GAURI GODSE, J.]