

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

**INTERIM APPLICATION NO. 7272 OF 2024
IN
APPEAL FROM ORDER NO. 136 OF 2024**

Mrs. Priyanka Keshav Tahilramani & Anr. ...Applicants/Appellants
Versus
Ashok Shyamlal Chandnani ...Respondent

Mr. Mohsin Ghaniwala i/b. Siddhiquee & Associates for the Applicants.
Mr. K. T. Kukreja i/b. Ms Chandni Sabnani for the Respondent

CORAM : M. M. SATHAYE, J.

DATED : 27th NOVEMBER 2024

P.C.:

1. Heard learned Counsel for the Applicant and learned Counsel for the Respondent. This is an Application seeking condonation of delay of approximately 57 days in filing the Appeal from Order.
2. Perusal of the Application reveals that the impugned order was passed on 04/11/2023. Applicant has pleaded difficulty in procuring the certified copy on the ground that his Advocate had changed and effort was made for applying for certified copy by filing necessary affidavit by the party. It is stated that the necessary certified copy was received on 15/01/2024. Records show that the Appeal from Order is lodged on 03/02/2024.
3. Learned Counsel for the Applicants submitted that the Applicant No. 1 is a non resident Indian staying at Dubai and the Applicant No. 2 is resident of USA. In these circumstances, delay condonation is sought.

4. Learned Counsel for the Respondent opposed the condonation of delay on the ground that once valuable right accrues to a party, it can not be jeopardized by such belated filing of the Appeal. He submitted that there is no sufficient explanation for condonation of delay. He submits that there was no change of Advocate because the Advocate in the lower Court continued and as such, there is false statement made about filing of the Application for certified copy by the party directly. He has relied upon the judgment of **Hendry Daniel vs Bhiku Ganba Desai**¹ which makes a reference to the judgment of **Esha Bhattacharjee vs. Managing Committee of Raghunathpur Nafer Academy**² which is also relied upon.

5. I have considered the submissions.

6. It is trite law that the Application has to be read as a whole. I find that the case for delay condonation, in essence, is that the Application for certified copy was not made in time because the Advocate engaged for filing Appeal from Order is not the same Advocate in the Trial Court. In the judgment relied upon by the Respondent in case of **Hendry Daniel (supra)** facts were that the order passed by the District Court recorded that the Applicant therein was found repeatedly coming before the Court on the grounds which are either incorrect or false or concocted. In such circumstances, this Court while confirming the order of the District Court has observed that exercise of discretion by the District Court does not suffer from any infirmity.

7. In the present matter, I am not considering legality of the discretion exercised by the District Court. This Court is considering the sufficient cause

1 2018 SCC OnLine Bom 1241

2 (2013) 12 SCC 649

for the first time, as it exists in the facts of this case. In my view, explanation offered by the Applicants is sufficient for condonation of nominal delay in filing the present Appeal from Order. Therefore, facts of the present case are clearly distinguishable and the judgments relied upon by the Respondent do not advance the case of the Respondent.

8. Sufficient cause is made out. The Application is therefore allowed. Delay is condoned.

(M. M. SATHAYE, J.)