

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.6118 OF 2024

Sunanda Ashok Mane

...Petitioner

Versus

Habib Husein Karmali Patel

...Respondent

Mr. Pradeep D. Bhavre i/b Mr. Upendra Singh, for the Petitioner.

Mr. Pradeep J. Thorat i/b Ms. Aditi S. Naikare, for the Respondent.

CORAM: MADHAV J. JAMDAR, J.

DATED: 24 FEBRUARY 2025

P.C.:

1. Heard Mr. Bhavre, learned Counsel appearing for the Petitioner and Mr. Thorat, learned Counsel appearing for the Respondent.

2. By the impugned Order dated 7th March 2024 the learned Appellate Court has rejected the M.A.R.J.I. Application No.241 of 2023 which has been filed seeking condonation of delay in filing the Appeal. The reasons given by the learned Appellate Court are to be found in Paragraph No.10 which reads as under :-

*“10. In the case at hand, the applicant has not explained the delay satisfactorily, therefore, the above citations are aptly applicable. Considering the unsatisfactory explanation about the delay, it has to be presumed that delay is occasioned deliberately and has occurred on account of culpable negligence of the applicant therefore, the application deserves to be rejected. With these observations, we answer **Point No.1 in the negative and in answer to point no.2 we pass the following order:-***

ORDER

M.A.R.J.I. Application No.241 of 2023 is rejected with cost.”

3. It is the submission of Mr. Bhavre, learned Counsel appearing for

the Petitioner that elaborate reasons are set out in the delay condonation Application but the same have not been considered by the learned Appellate Court.

4. Mr. Thorat, learned Counsel appearing for the Respondent submits that although the reasons given by the Petitioner are not sufficient, however, as the same are not considered by the learned Appellate Court, after taking instructions from the Respondent, Mr. Thorat, learned Counsel, states that by setting aside the impugned Order dated 7th March 2024 passed in the said M.A.R.J.I. Application No.241 of 2023, the same be remanded back to the learned Appellate Court of the Small Causes Court, Mumbai.

5. Accordingly, the impugned Order dated 7th March 2024 passed by the Division Bench of the Small Causes Court, Mumbai in M.A.R.J.I. Application No.241 of 2023 in Appeal in R.A.E. & R. Suit No.1065 of 2016 is set aside and said M.A.R.J.I. Application is remanded back to the learned Appellate Court for fresh disposal.

6. It is clarified that this Court has not considered the merits of said M.A.R.J.I. Application No.241 of 2023 and contentions of both the parties are expressly kept open.

[MADHAV J. JAMDAR, J.]