

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

**INTERIM APPLICATION NO. 3425 OF 2025
IN
FIRST APPEAL(ST) NO. 24980 OF 2024**

Mata Kamladevi Education Sanstha Thr.
Its Secretary Ramesh @ Raju Kaka Gaikwad ...Applicant
Versus
Godrej & Boyce Mft. Co. Ltd. Mumbai ...Respondent

Ms. Shabana Sothe for the Applicant.
Mrs. Naira Jejeebhoy i/b. Bachubhai Munim and Co. for the Respondent.

CORAM : M. M. SATHAYE, J.

DATED : 7th JULY, 2025

P.C.:

1. This is an Application by the Original Plaintiff seeking condonation of delay of 163 days in filing the First Appeal.
2. The Applicant's suit has been dismissed by the impugned judgment and decree dated 09/02/2024. Learned Counsel for the Applicant submits that after receiving the certified copy of the impugned decree, the Applicant was not having sufficient financial capacity to file the Appeal immediately and that has resulted in delay. She submits that the Applicant is an Educational Institute.
3. The learned Counsel for the Respondent strenuously opposed the Application, relying on the affidavit-in-reply filed on behalf of the

Respondent, contending *inter-alia* that no sufficient cause is shown apart from bare pleadings that the Applicant did not have sufficient money. She submitted that in case of financial difficulty, the Applicant could have approached the Legal Aid. It is submitted that even on merits, there is no case in favour of the Applicant and the suit is rightly dismissed. Certain observations in the order of this Court dated 05/11/2019 in earlier round of litigation under Appeal from Order No. 212 of 2018 is also relied upon, in essence, submitting that the Applicant has no case on merits.

4. Learned Counsel for the Respondent has relied upon the order dated 15/03/2024 passed in **Second Appeal No. 73 of 2018 with Civil Application No. 1310 of 2017 (Vasant Ishwara Bhuse vs. Mangal Chandrakant Bhuse & Ors.)** contending that this Court has held that although ordinarily, liberal approach is adopted in delay condonation, the approach cannot be equated with a casual one and the delay condonation was rejected in the said case with such observations. She further submitted that the Application was notarized and appeal memo was signed in April, 2024, however, it is filed in August 2024.

5. I have considered the submissions and perused the records.

6. In case of **Vasant Ishwara Bhuse (supra)**, the delay was of 2 years and 11 months and the reason offered for the delay was that the Applicant was senile and suffered from deceases, as also financial constraints. In the context of medical reason offered, this Court held that no medical records has been produced on record and found that the case is not believable.

7. It is only trite that the delay condonation is a subject that cannot be

dealt with in a straight-jacket formula and there cannot be a rigid thumb-rule. Delay condonation, by its very nature, has to be dealt with, on a case to case basis, and depends upon the facts of each case.

8. In the present case, the delay is of 163 days and reason offered is of financial difficulties. As already indicated above, the Application for delay condonation as well as appeal memo was affirmed on 23/04/2024, however, the same is filed belatedly. In my view this indicates that the Applicant was desirous of filing the Appeal in April 2024 itself and necessary affirmation and signing of the memo had already taken place. It is only that the Appeal is lodged belatedly.

9. The Court also cannot lose sight of the fact that the right of first appeal under section 96 of the Civil Procedure Code, 1908 is a statutory appeal with right to challenge the impugned decree. The First Appeal is the last fact finding Court under the scheme of the things.

10. One more aspect requires consideration at this stage. Under the impugned judgment and decree, there is no executable order, in as much as the suit is dismissed. Therefore there is no angle of prejudice to the Respondents *qua* executability of the impugned order.

11. In view of the aforesaid and considering the right of Appeal involved and considering the extent of delay, sufficient cause is made out.

12. The Application is accordingly allowed and delay is condoned, subject to condition of the Applicant depositing in this Court, within a period of three weeks from today, an amount of Rs.10,000/-.

13. The amount of costs shall be paid over to National Association for the Blind, Account No. - 3740000100008551, Bank - Punjab National Bank, Branch - Worli Seaface, IFSC Code - PUNB0374000 by the consent of the learned Counsel for the Respondent, who graciously agrees.

14. Interim Application is disposed of in above terms.

(M. M. SATHAYE, J.)