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

**INTERIM APPLICATION NO. 9726 OF 2024.
IN
FIRST APPEAL (ST) NO. 15419 OF 2024.**

Walter Murzello

...Appellant/Applicant.

Versus

Alban Jacinto Murzello & Ors.

...Respondents.

Mr. Deepak Shukla i/b. BNS Legal, for the Appellant/Applicant.
None for the Respondents

CORAM : M. M. SATHAYE, J.

DATED : 8th AUGUST 2025

PC.:

1. This is an Application filed by the Original Defendant No. 2 for condonation of delay in filing of the First Appeal. The impugned judgment and decree is dated 22/02/2019. According to office note there is a delay of about 5 years and 60 days in filing the Appeal.

2. Notices were issued and Respondent No. 3A is duly served. According to the office note other Respondents including the Respondent No. 2, who is contesting Respondent (being Plaintiff) is also served through newspaper publication. Nobody is appearing for the Respondents. No reply is filed opposing delay condonation.

3. It is stated by the Applicant that he had engaged an Advocate for

opposing the Suit. It is further stated that the Applicant had entered witness box to give evidence contesting the Suit. It is stated that in the month of February 2024, Applicant learnt that decree is passed against him. It is categorically stated that all throughout from February 2019 till February 2024, Applicant was not aware of the impugned judgment and decree.

4. The impugned decree is a decree of declaration and injunction and Defendant including present Applicant were directed to hand over the possession of the suit property. It is submitted on instructions that the Applicant has not yet received any notice of execution of the decree.

5. Contesting Respondent is not appearing despite service and no reply is filed. It is asserted that the Applicant is in possession of the Suit property, which is also not controverted. It is a case of total lack of knowledge from the date of decree till knowledge in February 2024 and filing of Application in May 2024.

6. It must be noted that Applicant had not only engaged Advocate for opposing the prayers in the suit on merits, but had also entered witness box and therefore it is apparent that he was contesting the Suit. Therefore, the Court will have to bear in mind that this is a substantive first appeal in last fact-finding Court.

7. Overall in view of the above, sufficient cause is made out. The

Application is allowed. Delay is condoned. Interim Application is disposed of in above terms.

(M. M. SATHAYE, J.)