

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

INTERIM APPLICATION NO. 14587 OF 2024.

IN

FIRST APPEAL NO. 342 OF 2023.

Abubakar S/O. Jan Mohd. Since Deceased Thr. Lrs. ...Applicants/
Mrs. Nasimabanoo W/O. Abubakar And Ors. Appellants.

Versus

Mohammed Yahyya s/o. Mohammed Ayub And Ors. ...Respondents.

Ms. Shraddha Pawar i/by Mr. Nilesh Patil for the Appellant/Applicant.
Adv. Suresh More for the Respondent Nos. 1 to 4.

Coram : Sharmila U. Deshmukh, J.

Date : January 9, 2025.

P. C. :

1. Interim Application has been preferred seeking recall of the conditional order dated 15th February, 2023 passed by this Court, dismissing the First Appeal upon failure to file the private paper-book within a period of one year and for condonation of delay of about 603 days caused in preferring the present Application.

2. Learned Counsel appearing for the Applicant submits that the Appeal came to be admitted by order dated 15th February, 2023 and conditional order was also passed for filing of the private paper-book within a period of one year. She would further submit that the Applicant did not have any knowledge about the legal procedure and

were not aware about any steps which are required to be taken which is clearly within the domain of the advocate on record. She would submit that the office of the advocate on record which was on rent was shifted and the papers were lost while shifting to the new office and when the litigant contacted the advocate and the orders were looked into, the Applicant become aware that the first appeal has been dismissed. She submits that thereafter steps were taken to reconstruct the papers and hence there is delay.

3. Learned Counsel appearing for the Respondent would strongly oppose the Application and would submit that the present Application has been filed after lapse of 206 days. He would further submit that this is third round of litigation as the matter was remanded to the Civil Court and thereafter impugned Judgment has been passed. He submits that by the impugned order the defendants were directed to deliver the possession of the suit premises to the Plaintiff and the Plaintiff's are deprived of the fruits of the decree.

4. At this stage what is to be considered is whether the delay of 603 days caused in preferring the present Application for recall of the order dated 15th February 2023, can be condoned. The order of 15th February 2023 admitted the appeal and directed the appellant to file a private paper-book within a period of one year from date of order failing which the appeal was to stand dismissed. The responsibility was

upon the advocate on record to take appropriate steps for filing of the private paper-book which does not appear to have been done in the present case. For the default on part of the advocate the litigant cannot be made to suffer. It is by reason of the conditional order which has come into play that the first appeal is dismissed for which the litigant cannot be blamed.

5. For the reasons stated in the Application, the delay stands condoned.

6. The conditional order dismissing the first appeal is recalled. Let the private paper-book be filed within a period of four weeks from today.

7. List the First Appeal on the final hearing board of **14th February 2025.**

8. Stay granted earlier, if any, to continue till next date.

[Sharmila U. Deshmukh, J.]