

Shabnoor

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

WRIT PETITION NO.11502 OF 2025

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Kaniyalal Vrujlal Mehta & Anr. ... Petitioners
V/s.
Evergreen Tenants Cooperative Housing
Society Ltd. & Ors. ... Respondents

Mr. Meezan Mohd R. Patel for the petitioner.

Usha Tiwari a/w V. Tiwari for respondent.

CORAM : AMIT BORKAR, J.

DATED : SEPTEMBER 18, 2025

P.C.:

1. By the impugned judgment and order, the Co-operative Appellate Court has refused to condone the delay of 130 days in filing the appeal. The sole question before this Court is whether the explanation furnished by the petitioners amounts to “sufficient cause” within the meaning of law so as to condone the delay.

2. The reasons assigned by the petitioners are reflected in paragraphs 3 and 10 of the application dated 28 October 2023. In paragraph 3, it is stated that the earlier advocate engaged by the petitioners had taken time to study the papers of the appeal and thereafter started preparing the same. In paragraph 10, it is further stated that the father of the advocate on record underwent angioplasty in September 2022 and ultimately died of a heart attack on 22 September 2022.

3. The illness and subsequent death of the advocate's father is a circumstance beyond the control of the petitioners. In such a situation, some delay in preparation and filing of the appeal is natural. The law of limitation is based on public policy to ensure finality, but at the same time, it also recognizes that justice should not be denied for reasons beyond the control of a party. It is well settled that liberal approach should be adopted while considering an application for condonation of delay, provided the cause shown is bona fide and not tainted with negligence or malafide.

4. In the present case, there is nothing to show that the petitioners deliberately delayed filing of the appeal. On the contrary, the record shows that the delay occurred due to circumstances explained above, which appear to be genuine. The petitioners cannot be made to suffer for reasons attributable to the personal difficulty of their counsel. The approach of the Appellate Court in rejecting the application appears to be hyper-technical, ignoring the settled principle that substantial justice should prevail over procedural technicalities.

5. In my opinion, the reasons set out in the application constitute sufficient cause for the delay of 130 days. Accordingly, the impugned order rejecting the application for condonation of delay is quashed and set aside.

6. The Appellate Court shall now consider the petitioners' appeal on its own merits, without being influenced by any observations made in the impugned order.

7. At the same time, the respondent-society is at liberty to raise all contentions before the Appellate Court, including the contention that the petitioner is not a member and therefore not entitled to maintain the appeal. All such issues shall be adjudicated independently in accordance with law.

(AMIT BORKAR, J.)