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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

INTERIM APPLICATION NO. 3386 OF 2025
IN
FIRST APPEAL NO. 34 OF 2021

Bashir I. Motiwala Through His Power Of Attorney ...Applicant.
Ajay Sarupria

Versus

Bombay Dyeing And Manufacturing Co. Ltd. ...Respondent.

*Mr. Siddhesh Bhole a/w. Mr.Yakshay Chheda , Mr. Ashwin Pimpale and Ms.
Bhavika Thakkar for the Applicant/Appellant.*
Ms. Anaisha Zachariah i/b. Nagandhi Shah & Himaytullah, for the Respondent.

Coram : Sharmila U. Deshmukh, J.

Date : May 05, 2025.

P. C. :

1. Interim Application has been preferred seeking restoration of the First Appeal which has been dismissed for non-filing of the Private paper book and for condonation of delay of 2 years and 41 days caused in preferring the present Application.
2. Learned counsel for the Appellant submits that due to oversight on part of the Advocate's office, private paper book could not be filed. He submits that the Applicant became aware of the order dated 13th July 2022, only when the Interim Application was listed before this Court on 14th February 2025 and therefore there is a delay of 2 years and 41 days.

3. Learned counsel appearing for the Respondent submits that there is no sufficient explanation which has been tendered for the delay of 2 years and 41 days.
4. Perusal of the order dated 17th February 2021, indicates that while admitting the Appeal, directions were given to file the paper book within a period of one year. Subsequently, common order was passed on 13th July 2022, for filing of the paper book within a period of 6 months failing which the Appeal to stand dismissed for non-prosecution. It is the specific pleading in the application that on 14th February 2025, when the Interim Application was listed, the Applicant became aware of the dismissal of the First Appeal. The order of 14th February 2025, records that in view of the disposal of the First Appeal nothing survives in the pending application. Considering the said order, it is evident that the Applicant was not aware of the conditional order dated 13th July 2022. The filing of the paper book is the duty of the Advocate on record and the litigant cannot be made to suffer for default on part of the Advocate. As the order was conditional order, same came into effect without further notice to the parties and the Applicant has acquired knowledge only on 14th February 2025.
5. There is thus sufficient explanation of 2 years and 41 days and hence the same stands condoned.
6. The order of 13th July 2022, dismissing the Appeal for non-

prosecution upon failure to file the paper book within 6 months is recalled *qua* the present Appeal.

7. Time to file the private paper book is extended by a period of one year from today.

8. First Appeal is restored to file.

9. In view of the restoration of First Appeal, the dismissal of Interim Application by an order of 14th February 2025, is required to be recalled, and is hereby recalled.

10. First Appeal alongwith Interim Application No.3750/2020 is restored to file. Stand over to **19th June, 2025**.

[Sharmila U. Deshmukh, J.]