

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

**INTERIM APPLICATION NO.7140 OF 2025
IN
COMMERCIAL FIRST APPEAL (ST) NO.7951 OF 2025**

Amrut Gada

...Applicant/Appellant

V/s.

Mrs. Shakuntala P. Raheja

...Respondent

Mr. Satish J. Agarwal *with Ms. Dhara Shah for the Applicant.*

Mr. Rohan Sawant *with Mr. Aagam Mehta i/b. Mr. Chaitanyaa Bhandarkar for the Respondent.*

**CORAM: ALOK ARADHE, CJ. &
SANDEEP V. MARNE, J.**

Dated: 13 JUNE 2025.

Oral Order : *(Per Sandeep V. Marne, J.)*

1. The Applicant/Appellant has filed this application seeking condonation of delay of 925 days in filing the Appeal. The Appellant has filed the present Appeal under the provisions of Section 13(1-A) of the Commercial Courts Act, 2015 challenging judgment and decree dated 5 May 2022 passed by the City Civil Court at Bombay in Summons for Judgment No.19 of 2022 filed in Commercial Suit No.1268 of 2021. Since there is delay of 925 days in filing the Appeal, the Appellant has filed the present application seeking condonation of delay.

2. Mr. Agarwal, the learned counsel appearing for the Appellant would submit that the delay in filing the appeal is essentially caused on account of pendency of review petition filed by the Appellant before the learned Judge of the Commercial Court. He would submit that immediately after passing of the impugned judgment and decree dated 5 May 2022, application for review thereof was filed by the Appellant on 22 June 2022. That the review came to be dismissed on 9 September 2024 and accordingly the present Appeal has been lodged on 3 March 2025. He would therefore submit that the period during pendency of the review application deserves to be excluded and that therefore though the total delay described in the application is 925 days, after excluding the period during which review application was pending, the actual delay is only of 103 days. He would submit that the delay deserves to be condoned so as to give an opportunity to the Appellant to pursue the challenge to the impugned decree on merits. That the Appellant has excellent case on merits and has sanguine hope to succeed in the appeal. He would accordingly pray for condonation of delay occurred in filing of the appeal.

3. The application is opposed by Mr. Sawant, the learned counsel appearing for the Respondent. He would submit that the delay in filing the appeal is actually of 925 days as the period of pendency of review application cannot be excluded while computing the delay. Without prejudice, he would submit that the appeal has been lodged on 3 March 2025 and accordingly the delay would be of 161 days even after excluding the period during which the review application remained pending. That no justification is offered in the application for condonation of delay. He would submit that the considerations for condonation of delay in commercial matters is altogether different and

would rely upon judgment of the Apex Court in *Government of Maharashtra (Water Resources Department) Represented by Executive Engineer V/s. Borse Brothers Engineers and Contractors Private Limited*¹ He would also rely upon order passed by the Division Bench of this Court in *Mangla International Pvt. Ltd. & Ors. V/s. Next Media Works Ltd.*² He would pray for dismissal of the application for condonation of delay and consequentially the appeal.

4. We have considered the rival contentions canvassed by the learned counsel appearing for the parties.

5. The main ground on which the condonation of delay of 925 days is sought by the Petitioner is pendency of application for review filed before the learned Judge of the Commercial Court. It appears that the review application was filed on 22 June 2022 and the same came to be dismissed on 9 September 2024. However, it is seen that the Appellant did not immediately lodge the appeal after 9 September 2024 and the same appears to have been lodged on 3 March 2025. Even if one goes by the date of affirmation of the appeal, the same is affirmed on 4 January 2025. Thus, the appeal is affirmed after lapse of period of about four months after dismissal of the review application.

6. Even if the long period from 22 June 2022 to 9 September 2024 when review application remained pending is to be ignored, there is absolutely no justification for not filing the appeal immediately after 9 September 2024. There is no cause shown in the application explaining the delay after dismissal of the review application on 9 September 2024. In his application for condonation of delay, the

¹ (2021) 6 SCC 460

² Commercial Appeal (L) No.16652 of 2024, decided on 6 March 2025.

Appellant has mainly discussed the merits of the case rather than showing sufficient cause for not filing the appeal immediately after 9 September 2024. The only pleadings raised by the Appellant for condonation of delay in filing the appeal is in paragraphs Nos.11 to 17 of the application, which read thus :-

11. That the Appellant submits that the delay of 925 days in filing the present appeal has been caused due to bona fide and unavoidable circumstances. The Appellant had initially filed a Review Application before the Hon'ble City Civil Court, Mumbai (now at Mazgaon), challenging the order that is now the subject of this appeal. The said Review Application was disposed of on 09.09.2024, which resulted in the Appellant awaiting and hence there is a delay;
12. That the Appellant submits that after the dismissal of the Review Application, the Appellant made earnest efforts to identify and engage competent legal counsel to represent them in filing the present appeal;
13. It is submitted that the delay is neither intentional nor deliberate but has occurred due to the aforementioned genuine circumstances. The Appellant humbly seeks the indulgence of this Hon'ble Court to condone the delay in the interest of justice;
14. That the Appellant states that the delay of 925 days has been caused since the Appellant had filed the Review Application before the Hon'ble City Civil Court, Mumbai (Now at Mazgaon) and the said Review Application came to be decided on 09.09.2024. That the Appellant states that thereafter the Appellant was in search of an Advocate to represent the said appeal;
15. That the delay is inadvertent;
16. That grave harm and loss would be caused to the Appellant if the delay in filing the Appeal is not condoned.
17. That no prejudice would be caused to the Respondents if the delay is condoned. The Appellant has a good case on merits.

7. Thus, there is total absence of any cause being shown for condonation of delay beyond 9 September 2024. It is well settled position of law that delay in filing appeal under the Commercial Courts Act, has

to be granted by way of exception and not by way of rule and that only in case where party has otherwise acted *bonafide* and not in a negligent manner as held by the Apex Court in paragraph 63 of *Borse Brothers Engineers* (supra) as under :

63. Given the aforesaid and the object of speedy disposal sought to be achieved both under the Arbitration Act and the Commercial Courts Act, for appeals filed under Section 37 of the Arbitration Act that are governed by Articles 116 and 117 of the Limitation Act or Section 13(1-A) of the Commercial Courts Act, a delay beyond 90 days, 30 days or 60 days, respectively, is to be condoned by way of exception and not by way of rule. In a fit case in which a party has otherwise acted bona fide and not in a negligent manner, a short delay beyond such period can, in the discretion of the Court, be condoned, always bearing in mind that the other side of the picture is that the opposite party may have acquired both in equity and justice, what may now be lost by the first party's inaction, negligence or laches."

8. The position is reiterated by the Division Bench of this Court in *Mangla International Pvt. Ltd.* (supra). We are therefore unable to find sufficient cause for condonation of delay in filing the appeal. Petitioner whiled away time of more than 2 years in prosecuting the review application and thus prevented the money decree from being executed. However, as observed above, even if the period during pendency of review application is to be ignored, no justification is pleaded in the application for condonation of delay beyond 9 September 2024. Considering the position that the Appellant has filed Commercial Appeal, it was necessary for him to plead proper justification since condonation of delay in filing commercial appeal is to be by way of exception and not by way of rule.

9. For the aforementioned reasons, it is held that the Appellant has failed to make out sufficient cause for condonation of delay in filing the appeal.

10. The Interim Application is accordingly dismissed. Consequently, the appeal also stands dismissed.

[SANDEEP V. MARNE, J.]

[CHIEF JUSTICE]