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

INTERIM APPLICATION NO. 12499 OF 2025

IN

COMMERCIAL FIRST APPEAL STAMP NO. 32115 OF 2025

Ishtiaque Ahmed Shah

**... Applicant/
Appellant.**

V/s.

Ajidevi Magram Chowdhary & Ors.

... Respondents

Mr. Vineet Sukumaran for Appellant.

Mr. Keshav K. Tripathi i/b. Disha P. Parekh for Respondents.

**CORAM : R.I. CHAGLA AND
FARHAN P. DUBASH, JJ.**

DATE : 13TH OCTOBER 2025

P. C. :

1. The Applicant/Appellant has taken out the above Interim Application in Commercial First Appeal for condonation of delay of 2 years and 190 days in filing the said Commercial First Appeal against the judgment and decree dated 8th February 2023 passed in Commercial Summary Suit No. 421 of 2022.

2. In spite of referring to Exhibits A, B and C in the body of the Interim Application, the Applicant has failed to annex the same.

3. More fundamentally, in paragraph 9 of the above Interim Application, the Applicant has averred that he had applied for certified copies of the Judgment and Decree in Execution Proceedings which were received by him, only on 3rd September 2025 and that the Commercial First Appeal had been filed shortly thereafter, thereby implying that prior thereto, he did not have knowledge of the same.

4. The Applicant has suppressed the fact that in an earlier Interim Application filed by the Applicant in Execution Application No. 200 of 2023 in Commercial Summary Suit No. 421 of 2022 on 6th April 2024 before the Trial Court i.e. City Civil Court at Bombay, in paragraph 2 there is reference to the said judgment dated 8th February 2023. A copy of the said judgment has also been annexed at Exhibit - B to the said Interim Application. Thus, the Applicant was fully aware of the *ex-parte* judgment dated 8th February 2023 way back on 6th April 2024 when the said Interim Application had been filed.

5. The purported cause for the delay in not filing the present Commercial First Appeal is that the erstwhile Advocate Ms. Shabnam S. Latiwala failed to file the Application under Order IX Rule 13 of the Civil Procedure Code, 1908 within time.

6. Further, in paragraph 8 of the above Interim Application, it is merely averred that the only application filed by the Advocate Ms. Shabnam

S. Latiwala was one before the Executing Court seeking stay of Execution proceedings, which did not serve the substantive purpose. No other/further details are set out. However, this does not detract from the fact that Applicant had taken no steps upon *ex-parte* judgment dated 8th February 2023 coming to the knowledge of the Applicant to file the present Commercial First Appeal on time.

7. In view thereof there is no sufficient cause shown for the delay of 2 years and 190 days in filing of the present Commercial First Appeal.

8. There is suppression of material facts in the present case apart from there being no sufficient cause made out in the Interim Application for condonation of delay. The Applicant cannot take shelter behind the default (if any) on the part of the erstwhile Advocate. Hence, the indulgence of the Court cannot be shown to the Applicant in these circumstances.

9. The delay in filing the Commercial First Appeal of 2 years and 190 days cannot be condoned.

10. The Interim Application is accordingly dismissed. There shall be no order as to costs.

11. After this order was dictated in Court, the learned Counsel appearing for the Applicant sought a stay of this order. Considering that this Court has held that there has been no sufficient cause shown for condonation

of delay in filing of the Commercial First Appeal and on that ground, the Application has been rejected, there is no question of granting any stay of this order as sought.

(FARHAN P. DUBASH, J.)

(R.I. CHAGLA J.)