

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
INTERIM APPLICATION NO.2276 OF 2024
IN
COMMERCIAL APPEAL (ST) NO. 15702 OF 2024
WITH
INTERIM APPLICATION (L) NO.21663 OF 2024
IN
COMMERCIAL APPEAL (ST) NO.15702 OF 2024

Ganesh Sawant .. Applicant

Versus

Ketan Vinod Chhatpar .. Respondents

WITH
INTERIM APPLICATION (L) NO. 23608 OF 2024
IN
COMMERCIAL APPEAL (ST) NO.15709 OF 2024
WITH
INTERIM APPLICATION (L) NO. 23907 OF 2024
IN
COMMERCIAL APPEAL (ST) NO.15709 OF 2024

Arvind Parab .. Applicant

Versus

Ketan Vinod Chhatpar .. Respondents

Mr.Anoshak Daver, a/w Mr. Gaurav Lele i/b Gaurav Lele for Applicants/Appellants.

Mr. Shanay Shah a/w Ms. Parita Mashruwala, Ms. Vishakha Chokhani, Ms. Vinisha Bhavnani i/b Jayakar & Partners for Respondent.

**CORAM : ALOK ARADHE, CJ &
BHARATI DANGRE, J
DATED : 29th JANUARY, 2025**

P.C:-

1. The two Appeals are filed by original defendant nos.2 and 3, to the Suit, raising a challenge to the unconditional leave being granted to defendant Nos.1, 4 to 8 to file the written statement, but decreeing the Suit against them since they had failed to appear and consequently the allegations in the plaint were deemed to be admitted and the plaintiff is declared as entitled to a decree forthwith under order 37 Rule 2 (3) and they are ordered and directed to pay a sum of Rs. 5,34,07,087.86 with interest @ 25% per annum on the principal sum from the date of filing of the Suit till payment or realization. In addition the plaintiff is allowed to proceed for execution of the decree against the defendant nos.2 and 3, without awaiting searing of the decree.

The defendant no.2 Arvind Parab has filed Commercial Appeal (L) No.15709 of 2024, whereas defendant no.3, has filed Commercial Appeal (L) No. 15702 of 2024.

2. The Appeals instituted are accompanied with applications seeking condonation of delay of 92 and 97 days respectively in filing the Appeals, the applications being filed on 1/12/2023, and 12/12/2023 respectively.

3. Pursuant to the order passed by the Court on 9/01/2025, the Registry was directed to verify as to whether the delay as recorded in the prayers is correct, as on behalf of the respondents, it was submitted that there was a delay of 183 and 187 days in filing the respective Commercial Appeals. The Registry verified the papers and proceedings of the Appeals and submitted a report to the effect that in terms of the report of the Certified Copy Department dated 10/01/2025, regarding certified copies received by the Appellant, the application was preferred on 6/12/2023 and the copy was issued on 8/12/2023, which was collected by the applicant on 13/12/2023.

In view of the aforesaid, the Senior Master and Assistant Prothonotary (Adm) computed the delay as 180 days by taking into consideration that the limitation to file an Appeal as prescribed under Section 13 of the Commercial Courts Act, 2015 is 60 days. The time consumed in receiving the certified copy from the date of its application was excluded.

4. In Commercial Appeal (L) No.15709 of 2024, the Appellant Arvind Parab has filed an additional affidavit affirmed on 17/01/2025, explaining the further delay.

5. We have heard learned counsel Mr. Anoshak Daver for the appellant in Commercial Appeal No.15709 of 2024 and Mr. Kevin Pereira, for the appellant in Commercial Application No.15702 of 2024.

Mr. Shanay Shah representing the respondent no.1, the plaintiff in the Summary Suit has vehemently opposed the applications seeking condonation of delay, on the ground that the applicants in both the applications are trying to pass the buck on one another and has offered no cogent reason for condoning the delay and in absence of sufficient cause being shown, the delay which has occasioned in filing of the Commercial Appeal may not be condoned and he would place reliance upon the decision of the Apex Court in case of *Government of Maharashtra (Water Resources Department) represented by Executive Engineer vs. M/S Borse Brothers Engineers and Contractors Pvt Ltd, (2021) 6 SCC 460*.

6. The appellant/applicant Arvind Parab (original defendant no.2) in his application has pleaded a ground of he being unwell, resulting into failure to engage an Advocate within time, as a result of which he was not legally represented in the Commercial Suit before the Court. According to him, when the applicant was served with the summons for judgment, he was suffering from coronary artery disease and on being advised rest, he was under continuous medical supervision and the necessary documents of his treatment are annexed along with the application. Thus, Arvind Parab has cited the reason of his illness in not presenting the Appeal within the period of limitation prescribed.

As far as Ganesh Sawant another applicant (original defendant no.3) is concerned, according to him upon receipt of the summons for judgment, he had requested respondent no.3 (original defendant no.2) to engage an Advocate for representing him in Commercial Summary Suit, but due to inadvertence on his part and since the applicant was travelling to his village, he was not represented in the Commercial Summary Suit before the High Court.

Pleading that grave prejudice and injury would be caused to the applicant, if the delay is not condoned, the application is filed.

7. Upon the Registry computing the further delay, Arvind Parab, who has filed an additional affidavit has attempted to justify by submitting that the Advocate on record attempted to file Commercial Appeal along with application for stay and condonation of delay was informed that it had to be e-filed. Further according to his affidavit, the Registry raised an objection with regard to deficit payment of Court fee, as the Court fee was computed as Rs. 3,00,000/- and some time was consumed in arranging the necessary amount.

8. We have perused the applications, supported by the additional affidavit, which has specifically pleaded that the delay is not intentional, but is bonafide and grave and irreparable loss would be caused to the appellants/applicants if the delay is not condoned and the appeal is not heard on merits.

In the additional affidavit, the applicant has specifically undertaken to be subjected to such costs for damages as the Court may award as compensation in the event of a party affected sustaining prejudice by any order that might be made on an interim order seeking condonation of delay.

9. In the case of *M/S Borse Brothers Engineers and Contractors Pvt Ltd* (supra), it is noted that Section 13(1A) of the Commercial Court Act, only provides for limitation period of 60 days from the date of judgment or order appealed against, without further going into whether the delay beyond this period can or cannot be condoned. Taking note of Section 14 of the Act, which aim at expeditious disposal of Appeals, it is held that the language of Section 14 makes its clear that the period of 6 months spoken of is directory and not mandatory in contrast to Section 16 of the Commercial Court Act, read with the schedule thereof and the amendment made to order VIII Rule 1 of CPC, which make it clear that the defendant in a Commercial Suit has 30 days time to file the written statement and this period cannot be extended beyond 120 days from the date of service of summons and on expiry of the said period, the defendant forfeits right to file written statement. However, in contrast in absence of such embargo in Section 13 of the Act, it is categorically held that Section 5 of the Limitation Act shall apply to the appeals filed under Section 13(1 A) as there is no exclusion of the applicability of the provisions of Section 5 of the Limitation Act, in its

applicability to the Commercial Courts Act.

10. It is trite that the expression “sufficient cause” contained in Section 5 of the Limitation Act is elastic enough to yield different results depending upon the object and context of a Statute and given the object of the Commercial Act, 2015, being expeditious resolution of disputes, the Appeal deserve to be considered on merits and no party can seek condonation of delay in filing the Appeal by claiming it to be his right.

11. When we have perused the reasons stated in the application seeking condonation of delay, we have arrived at a conclusion that an explanation offered for the delay, justify its condonation and since we find the reasons cited to be bonafide, as one of the applicant who has filed the appeal was suffering from ailment and he was authorised by the other one, to take steps for filing of appeal and the further impediment was caused since the advocate could not process the filing in the wake of the requirement of e-filing, and this period was further prolonged, since a comparatively large amount of Court fee was required to be deposited, we find sufficient justification in condoning the delay.

12. In the wake of the above, we deem it appropriate to condone the delay of 180 days in instituting the Appeals.

This is however subject to deposit of payment of cost of Rs. 50,000/- by each of the appellant in favour of the plaintiff/ the respondent no.1, within a period of 4 weeks from the date of

passing of this order, as we find the respondent being prejudiced by the delayed filing of Appeal.

IA No.2276 of 2024, IA No.23608 of 2024 is allowed.

List the Appeals along with the application for grant of stay 14/02/2025.

(BHARATI DANGRE, J.)

(CHIEF JUSTICE)