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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
IN ITS COMMERCIAL DIVISION

INTERIM APPLICATION NO.11379 OF 2025
IN
COMMERCIAL FIRST APPEAL NO.22774 OF 2025
IN
COMMERCIAL SUIT NO.769 OF 2021

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Tabrez Khan
wrongly mentioned in the judgment as
Tanrej Khan

...Applicant /
Appellant

Versus

Mr. Abhushama Hyatulla Chaudhary

...Respondent

Ms. Gayatri Yadav i/b. Prabhala for Applicant / Appellant.

CORAM : R.I. CHAGLA AND
ADVAIT M. SETHNA, JJ.

DATE : 23RD JANUARY, 2026

ORDER :

1. By this Interim Application, the Applicant / Appellant has sought condonation of delay of 45 days in filing of the Commercial First Appeal.

2. The Interim Application had earlier come up on 13th

January, 2026 when none appeared for the Respondents and the matter was stood over to 16th January, 2026. On the adjourned date, it was recorded that the Applicant / Appellant had served the Interim Application and the Commercial First Appeal on the Respondent and filed Affidavit of Service dated 8th January, 2026. In spite of service, the Respondent had not appeared. Accordingly, this Court had given the last chance to the Respondent to remain present on the next date and in the event he failed to do so, the Interim Application would be taken up in the absence of Respondent.

3. The Advocate for the Applicant / Appellant had been directed to serve notice of the 16th January, 2026 on the Respondent and file Affidavit of Service before the next date.

4. Today, the learned Counsel for the Applicant / Appellant has tendered copy of the Affidavit of Service dated 22nd January, 2026 which has been filed.

5. It appears that from the Affidavit of Service, that service of notice of the said Order was attempted on the Respondent but was unsuccessful as the envelope was returned with remark “no such

person on the address”.

6. Considering that, this Court vide order dated 16th January, 2026 made it clear that a last chance was being given to the the Respondent to remain present on the next date in view of the Interim Application having been served on the Respondent, the Interim Application is being taken up for condonation of delay in filing of the Commercial First Appeal in the absence of the Respondent.

7. The Applicant has stated that due to the default of the erstwhile lawyer, the notice of the impugned judgment had not been received by the Applicant, when the impugned judgment dated 19th March, 2025 had been passed. The Applicant has further stated that the Commercial Suit No.769 of 2021 had been unattended and / or not properly represented by the erstwhile Advocate for several years.

8. The Applicant has stated that it was only on 30th May, 2025 after change of Advocate that the newly appointed Advocate informed the Applicant of the impugned judgment having been passed on 19th March, 2025. The Applicant has thereafter taken

steps for having the Commercial First Appeal prepared. However, the Applicant not being aware of the day-to-day proceedings in the matter had to rely upon their current Advocate to draft the First Appeal.

9. The Applicant has stated that the First Appeal was attempted to be filed within 90 days from the passing of the impugned judgment. However, the same was not accepted as the Applicant was informed that since it is a commercial Suit, the limitation of 60 days as mentioned under Commercial Courts Act, 2019 would be applicable.

10. The Applicant has stated that in view of the Commercial First Appeal not being prepared and finalized within 60 days from the impugned judgment dated 19th March, 2025, there is a delay of 45 days in filing of the First Appeal.

11. Having considered the submissions of the learned Counsel for the Applicant in support of the Application, the delay in filing of the Commercial First Appeal appears to be on account of default of the Advocate for the Applicant. For such default, the

Applicant should not be made to suffer. Accordingly, in the circumstances, we consider it appropriate to condone the delay of 45 days in filing of the Commercial First Appeal.

12. Interim Application is accordingly allowed and delay of 45 days in filing of the Commercial First Appeal is condoned.

13. The Registry shall take the Commercial First Appeal on record. This would be subject to removal of office objections, if any.

[ADVAIT M. SETHNA, J.]

[R.I. CHAGLA J.]