

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

INTERIM APPLICATION NO. 12778 OF 2025
IN
FIRST APPEAL NO. 1123 OF 1997

Sofena D'Cunha & Ors. ... Applicants

In the matter between

John David D'Souza (thr. LRs) ... Appellant

V/s.

Pioneer Glass Industries ... Respondent

Mr. Amit Padwal a/w. Ms. Aafreen Bany for Applicant.

Mr. Sagheer A. Khan a/w. Adv. Insha Hanif, Adv. Sauda Nachan i/b. Judicare Law Associates for Respondents.

CORAM : FARHAN P. DUBASH, J.

DATE : 9th APRIL 2026

P. C.:

1. The present Interim Application seeks condonation of 210 days delay and restoration of the First Appeal along with pending Interim Application which is stated to have been dismissed for default vide order dated 7th January 2025 passed by this Court.

2. However, there is a checkered history in this matter which is required to be set out. Prior thereto, by an order dated 18th September 2012, this Court was pleased to allow the reliefs sought in Civil Application No. 2574 of 2012 and permitted the Applicants therein to be impleaded in place

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and stead of the Original Appellant - Mr. John David D'souza who passed away on 30th May 2012. The Applicants were permitted to amend the First Appeal and pending Civil Applications and serve a copy thereof of the amended pleading to the other side.

3. It appears that on 18th September 2012, when this Court passed the said order, this Court was not informed that prior thereto, on 4th May 2000, the Appeal had stood dismissed pursuant to the conditional order that was passed by the Registrar (Judicial - II). Admittedly, the said conditional order was not complied with and as a result, the First Appeal had stood dismissed since 2000 and therefore this position ought to have been disclosed to this Court at the time of filing Civil Application No. 2574 of 2012. However, this was not done and the order dated 18th September 2012 came to be passed. However subsequently, by an order dated 21st September 2013, this Court considered all the aforesaid circumstances and in the interest of justice, allowed Civil Application No. 2213 of 2012 and called for the record proceedings of the First Appeal and kept the same for final hearing.

4. Despite these orders, the Appellant did not remove the office objections which led to the orders dated 3rd May 2018, 21st June 2018 and 12th July 2018 being passed by the Registrar (Judicial - II) of this Court, the last of which was a conditional order directing the Appellants to supply the

copies of the Appeal memo and judgment for printing purpose, failing which the Appellant was put to notice that the Appeal would stand dismissed without further reference to Court. A period of four weeks time was granted to the Appellant for complying with the same.

5. Admittedly, the order dated 12th July 2018 was not complied with by the Appellant. As a result, the Appeal stood dismissed in August 2018. Despite this dismissal, it appears that the Appeal was listed on board on 7th January 2025, on which date, none appeared for the Appellants and as a result, the Appeal came to be dismissed for non-prosecution.

6. In the present Interim Application, the Appellant has annexed all these orders that are referred to above. However, the Interim Application only seeks to explain and condone the delay since the order dated 7th January 2025 has been passed. It is not in dispute that prior thereto, in fact the First Appeal had stood dismissed since August 2018. There is no explanation whatsoever that is offered in the Interim Application explaining the delay on the part of the Applicants in filing this Appeal in September 2025. Moreover, this Court is also not satisfied with the explanation which seeks to be offered by the Applicants for condoning the delay in preferring the said Interim Application for condoning the delay for the period post 7th January 2025. The Applicants' conduct reveals that the Applicants are not interested in prosecuting the Appeal. Not only that, they have exhibited sheer

negligence on their part.

7. Considering this, the Court is not inclined to allow the reliefs sought in the present Interim Application which is hereby dismissed. There shall be no orders as to costs.

(FARHAN P. DUBASH, J.)

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