



CNR NO. - MHSCA10004802023

IN THE COURT OF SMALL CAUSES AT MUMBAI
(Appellate Bench)

MARJI APPLICATION NO. 181 OF 2023
IN
APPEAL (ST.) NO. 401 OF 2023
IN
ORDER BELOW EXHIBIT - 137
IN
R. A. E. & R. SUIT NO. 1534/5106 OF 1984

1. Gulabrai Jhamromal (Deleted since deceased)

1(a) Mrs. Kavita Gulabrai Kurani & Ors. Applicants.
(Orig. Plaintiffs)

Versus

Mulchand Lakhamshi Respondent.
(Orig. Defendant)

Mr. S. B. Bobhate, Ld. Advocate for Applicants.

Divyakant Mehta & Associates, Ld. Advocates for Respondent.

Coram : Mohammad Nasir M. Saleem
Addl. Chief Judge
And
S. U. Deshmukh, Judge
Court Room No. 5
Date : 25.10.2023

ORAL ORDER (Per Mohammad Nasir M. Saleem, Addl. Chief Judge):

This is an application under Section 5 of the Limitation Act for condonation of delay of 4 days caused in preferring the appeal challenging the order passed below Exhibit 137 in RAE&R Suit No. 1534/5106 of 1984, whereby the applicants' prayer to appoint the Court Commissioner for the inspection and measurement of the suit premises came to be rejected.

2. Perused the application. Heard Ld. Advocate Mr. Bobhate for applicants and Ld. Advocate Mr. D. C. Mehta for respondent.

3. The Ld. Advocate Mr. D. C. Mehta argued with great vehemence that the application deserves to be dismissed on the ground of suppressio vari and suggestio falsie. He went on to point out that the applicants' prayer for inspection of the suit premises was already rejected by the Learned Trial Court and same was maintained upto the Hon'ble High Court, therefore, the application Exhibit 137 moved by the applicants was itself not tenable, therefore, it was rightly rejected by the learned Trial Court. He further went on to add that the aforesaid fact was deliberately suppressed by the applicants from disclosing in the present application. Be that as it may, we make it clear that while deciding an application for condonation of delay, this Court has judicial restraint. This Court cannot go into the merits of the order passed below Exhibit 137. Therefore, the aforesaid submissions have no force at this stage.

4. Delay is only of four days in filing the appeal challenging the order passed below Exhibit 137. Applicant No. 1 could not give instructions to his advocate due to his ill health and therefore, the appeal could not have been prepared and filed within time.

5. We are convinced with the explanation given by the applicants. There is no deliberate and intentional delay on the part of the applicants. Applicants have a statutory right to challenge the impugned order by exhausting judicial remedy. In the interest of justice and to avoid multiplicity of the proceedings, present application needs to be allowed. Hence, the order.

ORDER

1. MARJI Application is allowed.
2. Delay in filing an appeal is hereby condoned, subject to costs of Rs. 300/-, to be paid to the Legal Services Authority, within two weeks from the date of this order.
3. After payment of costs, office is directed to register and number the Appeal, after removing office objections, if any, in accordance with law.

I agree,

sd/-

(S. U. Deshmukh)
Judge
C. R. No. 5
25.10.2023

(Mohammad Nasir M. Saleem)
Addl. Chief Judge
C. R. No. 5
25.10.2023

Order dictated on : 25.10.2023
Order transcribed on : 25.10.2023
Order checked & signed on : 25.10.2023

MRS.