

MHCC050040302023



**IN THE COURT OF SESSIONS AT DINDOSHI
(BORIVALI DIVISION), GOREGAON, MUMBAI**

CRIMINAL MISCELLANEOUS APPLICATION NO.299 OF 2023

IN

CC No. 137/DV/2022.

1. Umesh Maldevbhai Bani,

Age 52 years, Occ: Textile Broker,
Address - 303, Aradhana CHS. Ltd., Happy
Home Society, J. S. Road, Dahisar (W),
Mumbai 400068.

2. Maldev Kanabhai Bani,

Age 76 years, Occ: Textile Business,
Address: Bldg. No. 1/C, Flat No. 11, Rustomji
Regency, Rustomji Irani Marg, J. S. Road,
Dahisar (W), Mumbai 400068.

3. Radhaben Maldevbhai Bani,

Age 75 years, Occ: Housewife,
Address: Bldg. No. 1/C, Flat No. 11, Rustomji
Regency, Rustomji Irani Marg, J. S. Road,
Dahisar (W), Mumbai 400068.

4. Kishan Maldevbhai Bani,

Age 46 years, Occ: Textile Business,
Address: 303, Aradhana CHS Ltd., Happy
Home Society, J. S. Road, Dahisar (W),
Mumbai 400 068.

5. Nehal Kishan Bani,

Age 35 years, Occ: Business,
Address: 303, Aradhana CHS. Ltd., Happy

...Applicants.

Home Society, J. S. Road, Dahisar W. Mumbai
400068

Versus

1. State of Maharashtra

2. Rupal Umesh Bani,

Age 46 years, Occ: Textile Garment,
Address - Building No. 1/C, Flat No. 11,
Rustomjee Regency, Rustomjee Irani Marg, J.
S. Road, Dahisar (W), Mumbai 400068.

...Respondents.

Ld. Adv. Mr. Ashwin Duggal for the applicants.

Ad. APP Ms. Usha Jadhav for the State/ respondent No.1

Ld. Adv. Mr. Rohan Bansal for the respondent No. 2

**CORAM : HIS HONOUR ADDITIONAL
SESSION JUDGE, M.H PATHAN,
COURT ROOM NO.10.**

DATE : 27th October, 2023.

ORAL ORDER

This is an application filed by the applicants for condonation of 120 days delay for filing of the appeal against the impugned order passed by the Ld. Metropolitan Magistrate, 68th Court, Borivali, Mumbai, dated 17/12/2022 in CC No. 137/DV/2022.

2. Ld. Advocate for the applicants submitted that they changed their earlier advocate after the date of 17th March 2023. Thereafter, he filed his vakalatnama on 26/05/2023 and during inspection of the file on 26/05/2023, he came to know about order dated 17/12/2022 and thereafter he applied for a certified copy of the said order on 30/05/2023.

Therefore, 120 days delay caused for filing appeal against the impugned order of the Ld. Metropolitan Magistrate.

3. Per contra, Ld. Advocate for the respondents submitted that it is the duty of the applicants to take care about their litigation. They cannot entire blame against the advocate. He has placed reliance upon the case of **Moddus Media Pvt. Ltd. V/s Scone Exhibition Pvt. Ltd. , Case No. :RFA No. 497 of 2017, in the Delhi High Court, 2017 Legal Eagle(DEL) 2612: 2017 Gojuris(DEL) 2612, equivalent Citation : 2017(3) KerLJ 13.** Hence, he prays to reject the application.

4. It appears that appellants have not filed appeal within limitation against the impugned order of the Ld. Metropolitan Magistrate. It is clear that delay caused due to fault of appellants/applicants, the appeal is not filed within limitation and delay of 120 days caused for filing of the appeal. However, for fair justice and opportunities to both sides, it is just and proper to condone the 120 days delay on condition, costs of Rs. 3000/- which is payable to respondent No.2. Hence, I pass the following order.

ORDER

1. The Criminal Miscellaneous Application No.299 of 2023 is allowed and delay of 120 days is hereby condoned, subject to costs of Rs. 3000/- which is payable to respondent No.2.

2. After depositing amount of costs in the court, appeal be registered as per rule, after due verification.

3. The Criminal Miscellaneous Application No. 299 of 2023 stands disposed of accordingly.

(M. H. PATHAN)

Dt. 27/10/2023

Additional Sessions Judge,
Borivali Div., Dindoshi, Mumbai

Dictated on	:	27/10/2023
Transcribed on	:	27/10/2023
Checked & Signed by HHJ on	:	27/10/2023

CERTIFIED TO BE TRUE AND CORRECT COPY OF THE ORIGINAL SIGNED JUDGMENT/ORDER.” UPLOAD DATE AND TIME 01/11/2023 AT 05.20 pm NAME OF STENOGRAPHER S.S.Chudji	
Name of Judge (with Court room no.)	HHJ Shri M.H. Pathan, City Civil & Sessions Court, Borivali Div., Dindoshi. (C.R.No.10)
Date of Pronouncement of JUDGEMENT/ORDER	27/10/2023
JUDGEMENT/ORDER signed by P.O. on	27/10/2023
JUDGEMENT/ORDER uploaded on	01/11/2023