

ORDER BELOW EXH. 58 IN R.C.S.No.64/2021**(Passed on 21.11.2022)**

This is an application filed by defendant no.3 for delay condonation in filing review application.

2. Through this application defendant no.3 submitted that the suit is for declaration and perpetual injunction. Defendant no. 3 gave an application for rejection of plaint under O.VII R.11 of Code of Civil Procedure 1908 at Exh.23. Said application is heard on merits. The application at Exh.23 is rejected. Defendant no. 3 apply for review the said order. But for filing review application, there is delay of 110 days. Therefore, he moved this application.

3. According to defendant no.3, he has medical business. He was busy in completing his annual financial work. Therefore, he did not meet his advocate. He could not give the documents related to the case. Hence, there is delay for filing this application. If said delay does not condoned, then there is heavy loss to the defendant no.3. Hence, he prayed to allowed this application.

4. Per contra plaintiff at Exh.60 filed his say and contended the application. According to plaintiff, there is no reason for filing this application. He has not filed any evidence in support of his application. There is no legal provision for said application. Plaintiff further contended that Exh.23 heard on merits. It prolongs the

hearing on Exh.5. Hence the said application deserves to be rejected.

5. I heard Ld. Advocates of both parties. Perused the record of the case. Ld. Advocate of plaintiff argued that Exh.23 is heard on merits. The order was passed by court on 14.02.2022. After that date three dates are passed. But between that period defendant no.3 has not moved any application. According to him, this is the way to prolong the matter. Defendant no. 3 did not give any reason to satisfy the court.

6. According to section 5 of The Limitation Act 1963, any application under the provisions of Code of Civil Procedure 1908, may be admitted after the prescribed period, if the applicant satisfies the court that he had sufficient cause for not making the application within such period.

Ld. Advocate of Defendant no. 3 relied on following case laws:

1. 2003(4) Mah.L.R. 748
2. 2009 (6) Mh.L.J. 71.

7. I have gone through the said case laws. Hon'ble Bombay High Court observed in 2003 (4) Mah. L.R. 748, Thyssenkrupp Industries Pvt. Ltd. versus Sangmner Bhag Sah. Sakhar Karkhana Ltd. that there was sufficient cause for condoning the delay. But in present case, the facts of this case are different from

the case law. Hence, this case law is not applicable. In 2009 (6) Mh. L.J. 71, Prabhakar Lambat vs. Shantaram Lambat. the facts of the case are different from this case. This is the case law on rights of coparceners. Hence, it is not applicable to present case.

8. On perusal of the record it is seen that there is no sufficient cause for condonation of delay. However, giving one opportunity to defendant no.3 would be proper. Therefore, the delay will be condoned for filing review application on payment of Rs. 500/- to plaintiff. Considering the above, I pass following order :

ORDER

1. The application is allowed subject to cost of Rs. 500/-.
2. After payment of cost of Rs. 500/- to plaintiff, delay is condoned.

Date : 21.11.2022
Place : Wai

Smruti S. Kulkarni
3rd Jt. Civil Judge Jr. dn.
Wai