

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO. 45 OF 2013  
IN  
CIVIL REVISION APPLICATION (STAMP) NO. 34213 OF 2012

|                                  |    |            |
|----------------------------------|----|------------|
| M/s. Gangadhar Sawalaram Agrawal | .. | Applicant  |
| VS.                              |    |            |
| Shankarlal D. Agrawal            | .. | Respondent |

Mr. Prashant S. Bhavke for Applicant.  
Mr. Girish R. Agrawal for Respondent.

**CORAM : M. S. SONAK, J.**  
**DATE : 30 JULY 2015**

**P.C. :-**

1] By this civil application, the applicant seeks condonation of delay of 5 years 137 days in instituting CRA against judgment and order dated 23 April 2007 made by the District Judge, Kolhapur in civil appeal no. 399 of 2001.

2] The applicant, has in fact partially succeeded in civil appeal no. 399 of 2001. The record indicates that the respondent, apprehending that the applicant will prefer a revision application before this Court, had filed a caveat and the notice of such caveat was also served upon the applicant well within the period before which the limitation for instituting CRA would expire. The caveat as also the notice (acknowledgment) have been placed on record by

the respondent. Thereafter, the respondent itself instituted CRA No. 220 of 2008 impugning the judgment and order dated 23 April 2007, to the extent it granted only partial relief to them. This revision was instituted by the respondent with some marginal delay which was condoned. The revision was admitted on 17 April 2008. Both at the stage of condonation of delay as also the admission of the said CRA, the applicant herein were duly notified and even heard by this Court.

3] The respondent applied for execution of the judgment and decree dated 23 April 2007 on or about 17 June 2011. Again, the applicant herein were duly notified. In fact in 2012, the applicant made application for stay on the execution in the CRA instituted by the respondent. This was dismissed on 26 September 2012. It is only thereafter that the applicant has filed this CRA with the application seeking condonation of delay of over five years.

4] It is also pertinent to mention, that the applicant applied to the trial Court under section 152 of the CPC for correction to the judgment and decree dated 23 April 2007. On basis of such application, the trial Court has made the order dated 26 March 2013, which, to a substantial extent, takes care of the interest of the applicant. No doubt, as against, the order dated 26 March 2013,

the respondent herein has preferred writ petition no. 4412 of 2013, which has been admitted. However, no interim relief has been granted therein.

5] The explanation offered for the inordinate delay of 5 years and 137 days is entirely confusing and does not appear to be bonafide. In paragraph 3 there is a general statement that the delay has occasioned on account of '*inadvertent reasons which is beyond control of the applicant*'. By way of elaboration, it is suggested that there were some talks of compromise between the parties and that some oral representations were made by the respondent, which persuaded the applicant from not instituting the CRA within reasonable period. The case that talks of compromise were on, cannot, in the facts and circumstances of the present case, be readily believed. The record indicates that the respondent had already instituted revision application as well as execution application. Further, even the applicant had attempted to obtain a stay on the execution. Besides, there are absolutely no details with regard to the vague statements with regard to compromise talks or representations. There is also some hint of incorrect advise. Again, there is absolutely no elaboration.

6] Although, it is true that in matters of condonation of delay

liberal approach is warranted, it is to be noted that in this case the delay is inordinate i.e. 5 years and 137 days. The explanation offered hardly constitutes any sufficient cause. This is not a case where the applicant are some poor persons who did not have a proper legal assistance. The applicant, taken chance in the matter and it is only at that stage, the revision application has been instituted. The applicant also cannot rely upon the circumstance that the respondent has instituted a CRA against judgment and order dated 23 April 2007, which is pending. At this stage, the respondent is entitled to rely upon and proceed on the position that he can at least execute partial decree which has been made in his favour.

7] Accordingly, no case is made out for condonation of delay of 5 years and 137 days in instituting the CRA. The civil application is therefore dismissed. As a consequence, the CRA cannot be entertained and the same is also dismissed.

**(M. S. SONAK, J.)**