

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY.
CIVIL APPELLATE JURISDICTION.**

**CIVIL APPLICATION NO. 215 OF 2014
IN
APPEAL FROM ORDER (ST.) NO. 2107 OF 2014**

Shri. Arun Blawant Sarnobat ... Applicant
V/s.
M/s. D. Dahyabhai & Co. Pvt. Ltd. & Ors. ... Respondents

Mr. Sandesh D. Patil for the applicant.
Mr. K. S. Deval i/b J. M. Joshi for respondent no.1.
Mr. Mahendra Agvekar i/b Mandar Limaye for the respondent no.2.

**CORAM : K. K. TATED, J.
DATED : 08/06/2015.**

P.C.:

. Heard learned Counsel for the parties.

2 This application is preferred by defendant no.1 for condonation of 3 years and 161 days delay in filing Appeal from Order challenging the order dated 21.04.2010 passed by the Civil Judge, Senior Division, Thane below Exh.5 in Special Civil Suit no. 873 of 2009.

3 The learned Counsel for the applicant submits that after the decision of the Trial Court on 21.04.2010, they approached the respondents for settlement. He submits that settlement talks were going on for more than 2 to 3 years. In support of this contention, the learned Counsel for the applicant relies on printout of email dated 11.11.2013. He further submits that thereafter, the applicant was not

keeping well. He submits that the applicant was admitted in the hospital and therefore, there is a delay of more than 3 years in preferring the present Appeal from Order.

4 The learned Counsel for the applicant submits that on merits they have good chance of success. He submits that the Trial Court restrained the applicant from creating any third party rights, title and interest in respect of godown property, which was not suit property in the present proceeding. Hence, in the interest of justice, this Hon'ble Court be pleased to condone the delay in preferring the present Appeal from Order. He submits that if, delay is not condoned, irreparable loss and injury will be caused to the applicant. He submits that applicant is ready and willing to pay cost, if any imposed by this court for condonation of delay.

5 On the other hand, the learned Counsel Mr. Deval appearing on behalf of respondent no.1 submits that though the Trial Court by order dated 21.04.2010 restrained the applicant from creating any third party rights, title and interest in respect of suit property i.e. godown, the applicant by conveyance dated 26.09.2012 created third party rights, title and interest. He submits that thereafter, the respondent no.1 filed application under Order 39 Rule 2 A of CPC on 28.02.2013 for taking appropriate action against the applicant. He submits that the paper and proceeding in application under Order 39 Rule 2 A of CPC was duly served on applicant on 04.04.2013. He submits that thereafter, the applicant preferred the present Appeal from Order on 06.01.2014. He submits that applicant has not shown

sufficient cause for condonation inordinate delay of more than 3 years. He submits that though the respondent no.1 served application under Order 39 Rule 2 A of CPC on 04.04.2013, the applicant filed the present Appeal from Order on 06.01.2014. He further submits that even there is no explanation for delay of more than 7 months in filing Appeal from Order from the date of knowledge about the application under Order 39 Rule 2 A of CPC. He submits that if delay is condoned, irreparable loss and injury will be caused to the respondent no.1. There is no merits in the present Civil Application and same to be dismissed with costs.

6 I heard both the sides at length. In the present proceeding, though the Trial Court passed order on 21.04.2010 restraining the applicant from creating any third party right title and interest in respect of the godown property, the present Appeal from Order filed by the applicant on 06.01.2014 i.e. after more than 3 and ½ years. In Civil Application, the applicant given reasons for condonation of delay in paragraph 4, which reads thus:

“4. Being aggrieved and dissatisfied with the judgment and order the appellant has preferred the captioned Appeal from Order. The applicant states that there is a delay in preferring the said appeal from order. It is the contention of the applicant that the said delay is because of the fact that the parties led to try to amicably resolve the matter. Settlement talks were going on. Suddenly the plaintiff received one notice under the provisions of Order 39 Rule 2 A of CPC interalia stating that the defendant number 1 had committed contempt of the order dated 21.04.2010. The defendant number 1 had filed reply to the said proceedings and it is pending. At this juncture that the defendant number 1 came to know that the plaintiff is in no to settle the matter

amicably. The defendant number 1 therefore decided to approach this court by way of filing the present appeal from order. It is the delay in filing the present Appeal from Order, the same is not intentional or deliberate but for the reasons mentioned above.”

7 It is to be noted that the applicant nowhere stated in the present Civil Application that since when the settlement talks were going on, how many meetings were held between them. Not only that, in Civil Application nowhere applicant stated the dates on which they met for settlement. Only statement made in paragraph 4 about the settlement talks between the parties.

8 As per the contention of learned Counsel for the respondent no.1, the plaintiff's evidence is completed in Special Civil Suit no. 873 of 2009.

9 Considering the fact that applicant failed to show sufficient cause for condonation of more than 3 and ½ years and plaintiff's evidence is already completed in Special Civil Suit no. 873 of 2009, I do not find any substance in the present Civil Application.

10 Hence, Civil Application stands rejected.

11 In view of rejection of Civil Application, nothing survives in the Appeal from Order. Hence, registration of Appeal from Order is rejected as infructuous.

(K.K.TATED, J.)