

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

**CIVIL APPLICATION NO.756 OF 2015
IN
FIRST APPEAL (ST) NO.10799 OF 2014
WITH
CIVIL APPLICATION NO.757 OF 2015
WITH
FIRST APPEAL (ST) NO.10799 OF 2014**

Municipal Corporation of Greater Mumbai .. Applicant

vs.

Shri Kalpesh Harilal Shah and Ors. .. Respondents

Mrs.M.R.Bhoir for the applicant

Mr.A.R.Patil, A.G.P. for the respondent nos.2 and 3

**CORAM : K.K.TATED, J.
DATED : 22/07/2015**

PC:

1 Heard the learned counsel for the parties.

2 This application is preferred by Municipal Corporation for Greater Mumbai defendant no.1 for condonation of 647 days delay in filing First Appeal challenging the decree dated 2.5.2012 passed by Bombay City Civil Court, Mumbai in L.C.Suit No.3258 of 2003 restraining the Corporation from acting as per order dated 14.6.1993 passed by Deputy Municipal Commissioner (Zone-IV) and the notice dated 27.3.2003 issued under section 488 of the Mumbai Municipal Corporation Act, 1888.

3 The learned counsel for the applicant submits that as soon as the decree was passed by the Trial Court they immediately applied for certified copies on 5.5.2012. The same was ready for delivery on 16.5.2012 and collected by them. He submits that thereafter the applicant filed First Appeal in this court on 21.3.2014. Advocate for the applicant submits that the Legal Department (W.S.) of the Corporation has been decentralised from Law Department in June 2012 and all the concerned advocates were shifted from the Legal Department (Western Suburb's) office to their assigned Wards. She submits that they shifted the papers from one department to other department. Papers of the present proceeding were mixed up with other proceedings. Thereafter, they were found. Hence, there is a delay in filing present First Appeal. The learned counsel for the applicant relies on paragraph 5 of the Civil Application in support of her contention which reads thus:

“5. The Applicants say that the delay is not intentional, as the Legal Department (W.S.) of the Applicants Corporation has been decentralized in June, 2012 and all the concerned advocates were shifted from the Legal Department (W.S.)'s office to their assigned wards. Thereafter all the papers and proceedings were in transit of the said shifting and while transferring of briefs in the concerned P/N Ward, the proceeding of Suit no.3258 of 2003 was mixed up with other proceedings. Thereafter also due to paucity of space in the concerned P/N ward, alongwith shortage of manpower the said papers and proceedings were not arranged properly. Hence, the concerned advocate was not in a position to take

instructions in order to file First Appeal to challenge the said order dated 02.05.2012. The Applicant submit that after taking diligent search the proceeding of Suit bearing no.3258 of 2003 was found and hence, the Hon'ble High Court is requested to condone the delay in filing the appeal which is unintentional. The Applicants submit that they have a good case and they are likely to succeed in the present appeal.”

4 Counsel for the applicant submits that in the interest of Justice, this Hon'ble Court be pleased to condone the delay of more than 600 days in filing First Appeal. She submits that if delay is not condoned, irreparable loss, harm and injury will be caused to the Applicant. She submits that in the interest of justice, this Hon'ble Court be pleased to condone the delay in filing First Appeal.

5 I have heard both the sides at length. It is to be noted that in the present proceeding the delay is more than 600 days in filing First Appeal. The reason disclosed by the applicant about misplace of papers and proceedings in the shifting from one department to other department cannot be a sufficient cause for condonation of delay. In paragraph 5 of the Civil Application, applicant has not stated when the papers were shifted to the other department, who was in charge of that shifting, later on who found those papers and on which date. All these facts are not stated by the applicant in the present Civil Application. This shows that present Civil Application is filed in casual manner for condonation of more than 647 days.

6 Our High Court in the matter of **Laxman Divekar Vs. State of Maharashtra 1998 (1) Mh.L.J 745** held that Court has no power to

arbitrarily condone the delay in the name of advancing substantial justice just because the applicant happen to be a Corporation.

7 The Apex Court in the matter of **Damodar Pillai Vs. South Indian Bank Ltd, 2005(5) All.M.R. 961 (SC)** held that hardship or injustice is not a ground for extending the period of limitation.

8 The Apex Court in the matter of **Pundlik Jalam Patil Vs. Ex.Engg. Jalgaon Medium Project and Ors, 2008(6) BCR 513** held that unless and until sufficient cause is shown, inordinate delay should not be condoned.

9 The Apex Court in the matter of **Oriental Aroma Chemical Industries Limited Vs. Gujarat Industrial Development Corporation reported in 2010 (5) SCC 459**, held that in the absence of sufficient cause, Court should not condone the delay.

10 The Apex Court in the case of **B. Madhuri Gaud Vs. B. Damodar Reddy, 2012 (12) SCC 693** held that if sufficient cause is not shown, delay should not be condoned.

11 Recently, the Apex Court in the matter of **Esha Bhattacharajee Vs. Managing Committee of Raghunathpur Nafar Academy 2013(12) S.C 450** held that if sufficient cause is not shown, application for condonation of delay be rejected.

12 Considering the submissions made by the learned counsel for the Applicant, the reason disclosed in paragraph 5 of the Civil Application and the law laid down by the Apex Court in the above cited matters, I

do not find any reason to allow the present Civil Application. Hence, following order:

- a) Civil Application stands rejected.
- b) In view thereof, registration of First Appeal stands rejected and Civil Application No.757 of 2015 for stay is dismissed as infructuous.

(K.K.TATED, J.)