

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

**CIVIL APPLICATION NO. 2348 OF 2015
IN
FIRST APPEAL (ST.) NO. 12892 OF 2015**

Mr. Purshottam Dattatray Karhadkar ... Applicant.
V/s.
Shri. Vishwas Trimbak Karhadkar & Ors. ... Respondents

Mr. S.S. Kanetkar for the applicant.

**CORAM : K. K. TATED, J.
DATED : 29/07/2015.**

PC.:

. Heard learned Counsel for the applicant.

2 This application is preferred by defendant no.1 for condonation of 4 years & 39 days delay in filing the First Appeal challenging the decree dated 20.12.2010 passed by the Joint Civil Judge, Senior Division, Pune in Special Civil Suit no. 1437 of 1997.

3 The learned Counsel for the applicant submits that respondents plaintiffs also preferred First Appeal no. 1781 of 2011 in this Court challenging the impugned decree dated 20.12.2010. He submits that the applicant received the notice in execution application in the month of January, 2015. At that time, the applicant learnt that respondents plaintiffs filed Special Dharkhast (execution application) for recovery of four flats on second floor of the suit property as per clause no. 3 of the operative part of the decree. He submits that thereafter, the applicant

immediately filed application for certified copy and filed the present First Appeal in this Court.

4 In support of these contentions, the learned Counsel for the applicant relies on averments made in paragraph 7 of the Civil Application. He submits that if delay is not condoned irreparable loss and injury will be caused to the applicant. He submits that if respondents plaintiffs execute the decree dated 20.12.2010, nothing will survive in the present proceeding. He submits that they have good chance of success in the present proceeding. He submits that in the interest of justice, this Hon'ble Court be pleased to condone the delay in preferring the present First Appeal.

5 I heard learned Counsel for the applicant at length. It is to be noted that in the present proceeding, though the Trial Court passed decree on 20.12.2010 in Special Civil Suit no. 1437 of 1997, the applicant/defendant no.1 filed application for certified copy on 01.04.2015. The same was ready on 17.04.2015 and applicant filed the present First Appeal in this Court on 20.04.2015. The operative part of the decree dated 20.12.2010 reads thus:

“ O R D E R

1 Plaintiff suit is hereby dismissed.

2 The relief in respect of declaration of development agreement and power of attorney dated 02.11.1987 is cancelled, the relief in respect of Sale deed dated 30.10.1995 and lease deed with Sadhana Sahkari Bank is illegal and not binding on them and the relief in respect of partition and separate possession as claimed is hereby rejected.

3 However, the plaintiff are entitled to receive

possession of the four flats on second floor of suit property as defendant is ready and willing to hand over the same. In above terms suit is hereby dispose off.

4 Parties to bear their own cost.

5 Decree be drawn accordingly.”

6 Bare reading of paragraph 7 of the Civil Application, shows that applicant has not disclosed any sufficient cause for condonation of more than 4 years delay in filing First Appeal. The reasons given by the applicant in paragraph 7 that they were under impression that plaintiffs did not file any execution application that cannot be sufficient ground for condonation of more than 4 years delay.

7 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.

8 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.

9 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.

10 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.

11 Considering the submissions made by the learned Counsel for the applicant, averments made in paragraph 7 of the Civil Application and law laid down by the Apex Court, I do not find any substance in the present Civil Application.

12 Hence, Civil Application stands rejected.

(K.K.TATED, J.)