

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

**CIVIL APPLICATION NO.455 OF 2014
IN
CIVIL REVISION APPLICATION (ST.) NO.16660 OF 2014**

M/s Prime Properties Pvt Ltd	.. Applicant
V/s	
N.M. Wadia Charities, a Public Charitable Trust	
1(a) Burjor Hormasji Antia and Others	.. Respondents

Mr. Vineet B. Naik, Senior Counsel a/w Mr. Prateek Pai i/b Keystone
Partners for the Applicant.
Mr. A.R. Pai with V.V. Pai for Respondent No.6.

**CORAM : M.S. SONAK, J.
DATED : OCTOBER 6, 2015**

PC. :

. This Civil Application seeks the condonation of delay in
filing the Civil Revision Application against the judgment and decree
dated 4 May 2012 made by the Division Bench of Small Causes
Court, Mumbai.

2 As against the judgment and decree dated 4 May 2012,
some of the Respondents have already instituted the Civil Revision

Application No.531 of 2012 which was admitted on 5 February 2014. The Applicant herein also seeks to challenge the judgment and decree dated 4 May 2012, to the extent that the same records certain findings against the Applicant and declines the Applicant the entire relief as prayed for by them. In the sense, therefore, the Civil Revision Application instituted by the Applicants is in the nature of a cross objection / or cross application in the context the Civil Revision Application No.531 of 2012 instituted by some of the Respondents, which has since been admitted on 5 February 2014.

3 Mr. Vineet Naik, the learned Senior Counsel for the Applicants has relied upon the averments made in the Civil Application and submitted that as the same constitute sufficient cause for instituting the Civil Revision Application one year and 275 days beyond the prescribed period of limitation. Mr. Naik, the learned Senior Counsel submitted that the Civil Revision Application has been instituted on 10 June 2014, which would be hardly 94 days beyond the period of 30 days normally prescribed for lodging of cross objections. Mr. Naik, the learned Senior Counsel pointed out that there were two registered deeds of surrender, which came to the knowledge of the Applicants only in the year 2012. Further, there

was a change in the Advocates engaged to appear for the Applicants and ultimately the Applicants were advised that it would be appropriate if they institute the Civil Revision Application, particularly, because the entire reliefs as claimed for and by the Applicants were not granted to them by the judgment and decree dated 4 May 2012.

4 Mr. Pai, the learned Counsel for Respondent No.6 submitted that in this case, no sufficient cause has been shown to condone the inordinate delay of one year and 275 days in instituting the Civil Revision Application. Mr. Pai, the learned Counsel submitted that in this case, the Applicant are Builders, Developers and a professional litigant. Therefore, the plea that the Applicant has not obtained a proper legal advise earlier, can hardly be accepted. Mr. Pai, the learned Counsel pointed that even the surrender deeds which were duly registered in the year 2004, are stated to have come to the knowledge of the Applicant in September, 2012. There is no explanation for the delay in instituting the Civil Revision Application after such knowledge. For all these reasons, Mr. Pai, the learned Counsel submitted that the application seeking the condonation of delay be dismissed with exemplary costs.

5 Heard the learned Counsel for the parties and perused
the record.

6 There is a case made out for condoning the delay in instituting the Civil Revision Application, subject to ofcourse on payment of substantial costs. In first place, although technically the delay in instituting the Civil Revision Application is of one year and 275 days, the same has to be construed in the contest of circumstances. This is really a revision application to challenge the portion of some judgment and decree dated 4 May 2012, in respect of which some of the Respondents have already instituted the Civil Revision Application No. 531 of 2012, which was since admitted on 5 February 2014. Although, there is no provision to file the cross objection in a Revision Petition, considering the nature of the present Civil Revision application, the circumstance that the Civil Revision Application No.531 of 2012 challenging from same judgment and decree dated 4 May 2012 being admitted on 5 February 2014, cannot be said to be a totally irrelevant circumstance. This Civil Revision Application has been instituted hardly within three to four months from the date of admission of Civil Revision Application No.531 of 2012. There is reference to change of Advocate and the advise

rendered by the new set of Advocates. There is no question of prejudice as such, because, the Applicant have really not gained anything substantial by delay in instituting the Civil Revision Application. Ultimately, the legality, propriety and validity of judgment and decree dated 4 May 2012 will be examined by this Court in Civil Revision Application No.531 of 2012 instituted by some of the Respondents. In that sense, the matter is writ large subject to of course to the jurisdictional parameters under Section 115 of the Civil Procedure Code before this Court. This is yet another circumstance which to some extent contributes to the cause shown.

7 In the matters of condonation of delay, emphasis cannot always be upon a quantum of delay alone. The emphasis has to be upon the quality of the cause shown. In the matters of this nature, it is possible that there is some lapse on the part of the Applicant. However, such lapse by itself is not sufficient to deny the adjudication of merits, unless cause shown smacks of malafides or is put forth as dilatory strategy. Normally adjudication on merits should not be denied. In this case, as noted earlier, the Civil Revision Application No.531 of 2012 as against the very same judgment and decree dated 4 May 2012 has already been admitted by this Court on 5 February 2014.

This aspect is relevant in the context of determining the prejudice.

8 No doubt, Respondent No.6 will be prejudiced, in the sense, issues which were decided in favour of the Respondent No.6, may have to be reconsidered, if the case is made out on merits warranting such reconsideration. However, prejudice of such nature can always be compensated by way of costs. Mr. Pai, the learned Counsel for Respondent No.6 is right in the matter of this nature, the costs will have to be substantial, if not exemplary. Considering that the Applicant are Builders and Developers and therefore, cannot seriously claim that they were deprived of effective means to obtain proper legal advice. The Applicant, therefore, will have to pay substantial costs with regards to condonation of delay.

9 Therefore, upon cumulative consideration of above facts and circumstances of the case, this Civil Application is allowed. The delay in instituting the Civil Revision Application is condoned. This shall be subject to payment of costs of Rs.50,000/- within a period of four weeks from today. The costs to be paid to Respondent No.6, as Respondent No.6 has contested this matter. In case the costs are not paid within a period of two weeks from today, this Application shall

be deemed to have been dismissed. Mr. Naik, the learned Senior Counsel, who appears for the Applicant makes a statement that such costs will be paid within a period of two weeks from today without fail and accordingly requests that the Civil Revision Application be taken up for admission forthwith. The statement is accepted.

10 The Civil Application is disposed of in aforesaid terms.

(M.S. SONAK, J.)