

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO. 707 OF 2008

M/s. Goel Road Carriers	..	Applicant
vs.		
Kalyani Sharp India Limited & Anr.	..	Respondents

None for Applicant.
None for Respondents.

CORAM : M. S. SONAK, J.
DATE: 29 APRIL 2015

P.C. :-

1] The applicant challenges order dated 1 October 2008 made by the 2nd Joint Civil Judge, Senior Division, Pune, dismissing Exhibits '1' and '7' in Misc. Application No. 516 of 2007 *inter alia* on the ground that no sufficient cause was shown for condonation of delay.

2] The records indicate that Special Civil Suit No. 655 of 1997 was decreed on 1 April 2004 and said decree put to execution. During the pendency of the execution, the applicant filed Misc. Application No. 343 of 2005, seeking *inter alia*, to set aside exparte decree dated 1 April 2004. The said Misc. Application No. 343 of 2005 was dismissed for default, as the counsel for the applicant filed '*no instructions pursis*'.

3] The applicant then filed Misc. Application No. 516 of 2007 seeking restoration of Misc. Application No. 343 of 2005. This application was accompanied by an application seeking condonation of delay. In the application seeking condonation of delay, the date on which the applicant came to know about the dismissal of the Misc. Application No. 343 of 2005 has been kept blank.

4] The learned Civil Judge, upon consideration of several circumstances, has recorded the conclusion that no sufficient cause was made out by the applicant in order to seek restoration of an application, which was itself seeking setting aside of an exparte decree. If the entire conduct of the applicant is examined, it does appear that the applicant was far from diligent in pursuing the matter. The various applications came to be filed in order to protract and postpone the execution of decree made on 1 April 2004. Accordingly, the conclusion recorded by the learned Civil Judge, that there was no case made out for condonation of delay, cannot be faulted.

5] This Court in its order dated 20 January 2012, has already commented upon the manner in which, the applicant has been pursuing the present Civil Revision Application. Despite such

conduct on the part of the applicant, indulgence was shown and the matter was restored. The order made on 20 January 2012, reads thus:

“1. The above Civil Application has been filed for restoration of the Civil Application No. 605 of 2011 which is in turn has been filed for restoration of the Civil Application No. 296 of 2011 which is filed for stay pending the above Civil Revision Application No. 707 of 2008.

2. The above Civil Revision Application No. 707 of 2008 has been admitted on 14/9/2009. The Civil Application No. 296 of 2011 has been dismissed as the Applicant herein was unrepresented on 22/6/2011. Thereafter Civil Application No. 605 of 2011 has also been dismissed for non-appearance of the advocate for the Applicant on 14/12/2011.

3. In my view, though there is negligence on the part of the Applicant in prosecuting the said Civil Application, considering the fact that the above Civil Revision Application has been admitted, the same would have to be restored. However, the Applicant would have to be put to terms in view of what has transpired in the past. The above Civil Application No. 13 of 2012 is therefore allowed and made absolute in terms of prayer clause (a). Resultantly, the Civil Application No. 605 of 2011 is restored to file. The Applicant to pay costs of Rs.5000/- to the Respondent Nos. 1 and 2 within a period of two weeks from date. It is only on payment of such costs that the benefit of the instant order would enure to the Applicant. If the costs are not paid, the above Civil Application No. 13 of 2012 would be deemed to have been dismissed. The above Civil Application No. 13 of 2012 is accordingly disposed of.

6] Today, when the matter is called out, neither the applicant nor its Advocate remained present.

7] There is no clarity as to whether there is any interim relief to this Civil Revision Application staying execution proceedings. Nevertheless, the decree is of the year 2004. Considering the manner in which the applicant has been prosecuting the legal proceedings, there is no case made out for interference with the impugned orders or to further prolong the execution proceedings.

8] Accordingly, Civil Revision Application is dismissed. There shall be no order as to costs.

(M. S. SONAK, J.)

Chandka