

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

**CIVIL APPLICATION NO. 1436 OF 2014
IN
APPEAL FROM ORDER (ST) NO. 29773 OF 2014**

Gopal Suresh Wanjara & Ors.	... Applicants/Appellants
V/s.	
M/s. Mamtora Foundation	... Respondent

Mr. Rakesh Kumar with Manoj Singh i/b MKS Legal Asso. for the applicant/appellant.

Mr. Anuj Narulla i/b Jhangiani Narulla & Asso. for the respondent.

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

P.C.:

. Heard learned Counsel for the parties.

2 This Application is preferred by the defendants for condonation of 262 days delay in filing Appeal from Order challenging the order dated 09.01.2014 passed by the Bombay City Civil Court at Dindoshi in S.C. Suit No. 3663 of 2013 restraining the applicants/defendants from encroaching upon the open portion of suit property around the constructed portion shown in Exh.B to the plaint.

3 The learned counsel for the applicants submits that applicants are tribal persons and rustic villagers and they do not have

any knowledge about the procedure and/or law. Hence, there is a delay in preferring the present Appeal from Order. He submits that because of financial difficulties, there is delay in preferring the present Appeal from Order. He submits that the applicants have good chance of success in the present proceeding.

4 The learned counsel for the applicants submits that for want of proper advised from Advocate, there is delay in preferring the present Appeal from Order. He submits that even the Apex Court in the matter of *Dhiraj Singh (D) Tr. V/s. Haryana State, reported in MANU/SC/0778/2014* held that Court should take lenient view at the time of condoning the delay. He submits that in the above mentioned facts and law declared by the Apex Court, this Hon'ble Court be pleased to condone the delay. He submits that if delay is not condoned irreparable loss and injury will be caused to them.

5 On the other hand, the learned counsel Mr. Narulla appearing on behalf of respondent plaintiff vehemently opposed the present Civil Application. He submits that the applicants have not shown sufficient cause for condonation of inordinate delay of 262 days in filing present Appeal from Order. He submits that though the

applicants received the certified copy of impugned order on 16.01.2014, the present Appeal from Order filed by them in November, 2014. There is no explanation for more than 8 months in the present Civil Application. He further submits that the reasons given by the applicants in paragraphs 3 and 4 of application cannot be treated as sufficient cause for considering the present Civil Application. He submits that initially the respondent plaintiff filed Appeal from Order no. 157 of 2014 challenging the impugned order dated 09.01.2014. He submits that the said Appeal from Order was allowed by this Court, after hearing both the sides at length. He further submits that the applicants also filed another suit i.e. S.C. Suit No. 1115 of 2014 in Bombay City Civil Court at Bombay for injunction restraining respondent from dispossessing applicants from suit premises. He submits that in that suit the applicants preferred Notice of Motion and moved for ad-interim relief. He submits that the Trial Court by order dated 09.05.2014 refused to grant any ad-interim relief in favour of applicants. He submits that even the applicants filed revenue proceeding before the Competent Authority i.e. Deputy Collector Appeal as well as Addl. Commissioner, Konkan Division, Mumbai. He submits that applicants have full knowledge of procedure to be adopted to protect their interest and therefore, the reasons disclosed by the

applicants in paragraph 3 of the Civil Application cannot be treated as sufficient cause.

6 The learned Counsel for the respondent plaintiff submits that the applicants have not placed on record any documentary evidence to show that they were in financial difficulties. Therefore, the reason given in paragraph 4 of Civil Application cannot be considered as sufficient cause for condonation of inordinate delay of 262 days. He submits that as the applicants failed to disclose sufficient cause, there is no substance in the present Civil Application and same to be dismissed with costs.

7 I heard both the sides at length. In the present proceeding, the Trial Court by impugned order dated 09.01.2014 restrained the applicants from encroaching upon the open portion of the suit property around the constructed portion as shown in Exh.B of the plaint. The operative part of the said order reads thus:

“ORDER

Issue ad-interim injunction restraining the defendants from encroaching upon the open portion of suit property around the constructed portion shown in the Exh.B to the plaint as shown by hatched line.

It is made clear that the present plaintiffs shall not obstruct the occupants (present defendants) of

the said constructed portion in the suit land for their ingress and egress to the constructed portion. The occupants of the constructed portion shall not carry out any construction activity.

Moreover, the plaintiffs shall maintain status-quo as prevailing today and shall not undertake any developmental activity till disposal of this N/M.

Adjd for reply to N/M to 05.02.2014.”

8 Though, the order was passed on 09.01.2014, the applicants preferred the present Appeal from Order in November 2014 i.e. after more than 260 days. The reasons given by the applicants in paragraphs 3 and 4 about want of knowledge and financial difficulties cannot be considered as sufficient cause for condonation of delay.

9 The applicants have already filed several litigation against the respondent in respect of suit property as stated hereinabove. Therefore, it is very difficult to accept the contention made by the learned Counsel for the applicants that applicants have no knowledge about law and procedure to be adopted to protect their interest. Even, for the purpose of financial difficulties, the applicants have not placed on record any documentary evidence to show that, at that time, they were suffering by financial crisis. The authority relied by the applicants in the matter Dhiraj Singh (Supra) is not applicable to the facts and circumstances of the present case. It is to be noted that in the present

case, though the applicants filed several litigation against the respondent in respect of the same suit land, they made averments in paragraphs 3 of the Civil Application that they have no knowledge about the procedure to be adopted to protect their interest.

10 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.

11 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.

12 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.

13 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.

14 The Apex Court in the matter of **Esha Bhattacharjee 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.

15 Considering the above mentioned facts and law declared by the Apex Court, I am of the opinion that applicants have not made out any case to entertain the Civil Application for condonation of delay.

16 Hence, Civil Application stands rejected.

17 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.)