

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 11638 OF 2014
WITH
WRIT PETITION NO. 10002 OF 2014

Shri A. Khan	..	Petitioner
vs.		
Senior Manager (IRW) Naval Dockyard		
Mumbai & Ors.	..	Respondents

Mr. Vishal Kanade with Mr. Sanjay Gawde for Petitioner.
Mr. Vijay Kantharia with Mr. P. S. Gujar for Respondents.

CORAM : M. S. SONAK, J.
DATE: 05 JANUARY 2015

P.C. :-

- 1] Rule.
- 2] With the consent of the learned counsel and at their request the writ petition no. 11638 of 2014 is taken up for final hearing.
- 3] Heard the learned counsel for the parties.
- 4] Writ petition no. 11638 of 2014 is directed against the order dated 5 December 2014 made by the Judge, City Civil Court, Greater Mumbai, in his capacity as an appellate authority under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 declining to condone the delay of 31 days in filing the appeal.

5] In making the impugned order, the appellate authority seems to have adopted an unduly harsh and technical approach. The appellate authority has concerned itself more with the merits of the issues raised in the appeal rather than the cause shown in support of the application for condonation of delay.

6] This is a case where the delay involved is hardly of 31 days. The petitioner has placed on record some material which establishes that he was required to attend to his ailing wife and daughter including by way of visits to hospitals. The petitioner, in his application seeking condonation of delay has also stated that he was civilian employee with the Indian Navy (Technician) and that his financial position was not such as would enable him to immediately prefer the appeal in question. The petitioner has also stated that he has no savings as the same were used for the marriage of his younger sisters. All these circumstances were sufficient to make out a case for sufficient cause for condonation of delay of hardly 31 days.

7] In view of the aforesaid, the impugned order dated 5 December 2014 is hereby set aside. The delay in preferring the appeal stands condoned. The appellate authority to hear and decide the appeal on its own merits expeditiously and in any case within a

period of four months from today. The petitioner undertakes to cooperate in the expeditious disposal of the appeal.

8] The learned counsel for the petitioner points out that writ petition no. 10002 of 2014, has been filed impugning the order made by the appellate authority on 8 November 2014 declining ad interim relief pending appeal solely on the ground that ad interim relief could not be granted until application for condonation of delay in filing the appeal is disposed of. Consequent upon dismissal of an application seeking condonation of delay, the said writ petition has become infructuous and is accordingly liable to be disposed of as such. Accordingly, writ petition no. 10002 of 2014 is taken on board and disposed of as infructuous.

9] However, now that the delay in filing the appeal has been condoned and directions issued for expeditious disposal of the appeal within a period of not exceeding four months from today, it is just and proper that pending disposal of such appeal, the order impugned in the appeal is stayed. It is made clear that this interim relief is being granted, taking into consideration the difficulties concerning the health of petitioner's wife and daughter. The circumstance that this relief has been granted at this stage, shall not be made use of by the petitioner, for seeking automatic extension of

such relief, in case the appellate authority decides the appeal against the petitioner. At that stage, the matter will have to be considered upon its own merits.

10] Accordingly, Rule is made absolute in writ petition no. 11638 of 2014 to the aforesaid extent.

11] Writ petition no. 10002 of 2014 is disposed of as infructuous.

12] The parties shall appear before the appellate authority for directions on 19 January 2015 so as to enable the appellate authority to expeditiously hear and decide the appeal on its own merits. The appellate authority shall dispose of the appeal within a period not exceeding four months from today.

13] Parties to act on the basis of an authenticated copy of this order.

(M. S. SONAK, J.)