

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

CIVIL APPLICATION NO.467 OF 2015
IN
APPEAL FROM ORDER (ST) NO.33761 OF 2014

Shrinivas Tukaram Badve

...Applicant

V/s.

Jayant Audumbar Khadake & Ors.

...Respondents

Mr. P. K. Patole i/b. S. S. Patwardhan for the Applicant.

CORAM: K.K. TATED, J.
DATED : MARCH 30, 2015

PC. :

1. Heard the learned counsel for the Applicant. This Application is preferred by the Defendant No.1 for condonation of 1 year and 59 days delay in filing the Appeal from Order challenging the order dated 22/07/2013 passed by the learned Additional Judge, Small Causes Court and Jt. Civil Judge, Senior Division Pune below Exhibit 31 in Special Civil Suit No.649/2013 rejecting the Application under Order 39 Rule 1 and 2 of the Code of Civil Procedure, 1908 filed by the Applicant Defendant No.1 for grant of temporary injunction.

2. The learned counsel for the Applicant submits that the Applicant misunderstood the order dated 23/07/2013. He was under impression that the said order is of ad-interim and not final order. He submits that when he visited the Advocate's office on 03/11/2014 he learnt that the

order dated 22/07/2013 was not ad-interim order but a final order. Hence, he preferred the present Appeal from Order. In support of his contention, he relies on paragraph 3 of the Civil Application which reads thus:

3. *The Applicant states that he felt that the hearing of the Application for interim injunction dragged on for too long. The Applicant, therefore, repeatedly approached his Advocate to know the status of hearing of the said Application as also the Application below Exh.31 that he had filed. The Applicant finally came to know that the learned Trial Court has disposed of the Application below Exh.5 and Exh.31 by order dated 22/07/2013. When the Applicant visited the office of his then Advocate on or about 03/11/2014 the Applicant was shocked to know that his impression that there was only an ad-interim order and final decision on the Application of either parties for interim relief was yet awaited, is only a matter of misunderstanding. The Applicant was surprised by the said fact. The Applicant, therefore, decided to withdraw his brief from the then Advocate. The Applicant, therefore, obtained the NOC of his then Advocate and approached a different Advocate for his representation in the court of the learned Civil Judge, Senior Division, Pune. The new Advocate has filed his Vakalatnama on 24/11/2014. After studying the file of the Applicant, his new Advocate has advised the Applicant that the order dated 22/07/2013 needs to be challenged by filing an appropriate appeal. The Applicant states that valuable time is lost in the meantime. The Applicant was prevented from filing the present appeal from order because of his ignorance of the true nature of the interim injunction order dated 22/07/2013. The Applicant misunderstood the said order only to be an ad-interim order for supply of electricity, when the said order was actually the final order disposing off the Application below Exh.5. Being ignorant of the said position, the Applicant was prevented from approaching this Hon'ble Court by way of the present Appeal from Order."*

3. He submits that they have good chance of success in the matter. He further submits that the delay is not intentional. Same is caused

because the Applicant misunderstood the order dated 22/07/2013. Hence, in the interest of justice, this Hon'ble Court be pleased to condone the delay in preferring the Appeal from Order.

4. Heard the learned counsel for the Applicant at length. It is to be noted that the reason given by the Applicant in paragraph 3 of the Civil Application is that the delay of more than 1 year has been caused because of misunderstanding the order dated 22/07/2013. The Applicant was under impression that the said order was ad-interim order and not final order, and hence, there is delay in preferring the present Appeal from Order. The reasons disclosed by the Applicant in paragraph 3 of the Civil Application cannot be said to be sufficient cause for condonation of delay of more than one year.

5. Our High Court in the matter of **Laxman Divekar Vs. State of Maharashtra 1998 (1) Mh.L.J 745** held that Court has no power to arbitrarily condone the delay in the name of advancing substantial justice just because the applicant happen to be a Corporation.

6. 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.

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. Recently, 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 needs to be rejected.

11. In view of the above mentioned facts, the reasons disclosed by the Applicant in paragraph 3 of the Civil Application and the law laid down by the Apex Court, I am of the opinion that the Applicant failed to make out a case for condonation of delay of more than 1 year. Hence, the Civil Application stands rejected.

12. Consequently, the registration of the Appeal from Order stands rejected.

(K.K. TATED, J.)