

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

WRIT PETITION NO.2157 OF 2015

**Sarita Nagari Phase II,
Sahakari Griha Rachan Sanstha Maryadit
Through its Chairman
Shri Tryambak Chintaman Thatte & anr. : Petitioners.**

Versus

**M/s. Belvalkar Housing Company
(Earlier known as M/s. A. V. Bhat
Housing Company)
Through its partner and duly authorized
signatory
Shri Sameer Sharadchandra Belvalkar & ors. : Respondents.**

**Mr. S M Pathak for the Petitioners.
Mr. P B Kulkarni for the Respondent No.1**

**CORAM : R. M. SAVANT, J.
DATE : 14th March 2016**

P.C.

1 The writ jurisdiction of this Court is invoked against the order dated 24/06/2014 passed by the District Judge-10, Pune by which order the Application for condonation of delay filed by the Respondent Nos.1 to 5 for condonation of delay of 77 days in filing the Appeal came to be allowed on the imposition of costs of Rs.10,000/- on the said Respondents.

2 The Respondent Nos.1 to 5 herein who are the original Defendant Nos.5 to 9 They are the Developers and the original owners of the property in question. The Petitioners herein are the original Plaintiffs in Regular Civil Suit

No.162 of 2004 filed by them for the relief of declaration in respect of the revised layout. It seems that in the said suit an application for temporary injunction came to be filed by the Plaintiffs. Suffice it would be to state that the said application came to be rejected by the Trial Court by the order dated 28/04/2004. The Plaintiffs thereafter filed Misc. Civil Appeal No.161 of 2004 on 26/05/2004. It seems that the record and proceedings in the said suit were called by the District Court and pursuant to which the record and proceedings were remitted to the District Court by the Trial Court. The record and proceedings were sent back to the Trial Court on 25/08/2004 by the District Court and it seems that the record and proceedings were received by the Trial Court on 07/09/2004. thereafter Misc. Civil Appeal No.161 of 2004 came to be dismissed on 31/03/2006. The said suit thereafter proceeded to trial and ultimately came to be decreed on 16/11/2013.

3 The Respondent Nos.1 to 5 proposed to file an Appeal against the said decree dated 16/11/2013 passed by the Trial Court. However, in view of the fact that there was delay of about 77 days in filing the Appeal, the Respondent Nos.1 to 5 filed an application for condonation of delay being Civil Misc. Application No.266 of 2014. It is the case of the Respondent Nos.1 to 5 in the said application and especially Respondent No.1 Developers that he got the knowledge of decreeing of Regular Civil Suit No.162 of 2004 on 04/02/2014 when their works were obstructed by certain members of the

Petitioner Society not to commence work of erection of safety barriers and fencing on their adjacent property. It is the case of the Respondent Nos.1 to 5 that thereafter the Respondents applied for certified copies on 05/02/2014 and the same were made available on 11/02/2014. It is also the case of the Respondents that since during the consideration of the said Misc. Appeal arising out of rejection of the application for temporary injunction, the Record and Proceedings were called for by the District Court, they were informed by their Advocate that after the Record and Proceedings were remitted back to the Trial Court, they would be intimated of the said fact by notice and labouring under the said impression that they did not contact or interact with their Advocate. It is also their case that after the certified copies were obtained, sometime was lost in preparing the papers relating to the Appeal and ultimately when the Appeal was filed there was a delay of 77 days.

4 The said application was opposed to on behalf of the Petitioner Society and the grounds mentioned therein were questioned. The Petitioner Society relied upon the fact that there were other litigation between the parties where the Respondent Nos.1 to 5 were appearing and therefore the explanation given could not be accepted.

5 The Lower Appellate Court considered the said application and by the impugned order date 24/06/2014 has allowed the same. The reasons

given by the Applicants i.e. the Respondent Nos.1 to 5 that their Advocate has informed them that they will receive the notices from the Trial Court after the Record and Proceedings were remitted back to the Trial Court commended acceptance to the Lower Appellate Court. The Lower Appellate Court held that otherwise there was no reason for the Applicants i.e. the Respondent Nos.1 to 5 to stay away from the proceedings especially when they were appearing in other proceedings. As indicated above it is the said order dated 24/06/2004 which is taken exception to by way of the above Writ Petition.

6 The learned counsel appearing on behalf of the Petitioner Shri Pathak would contend that the reasons mentioned in the application hardly constitute a sufficient cause for condonation of delay of the said 77 days. It was the contention of the learned counsel for the Petitioner that the Respondent No.1 are the Developers and the Respondent Nos.2 to 5 herein are the owners, and are therefore expected to keep themselves abreast of the development in the proceedings. The learned counsel for the Petitioner sought to place reliance on the judgment of this Court reported in 2016(1) MhLJ 89 in the matter of Vasant Vithal Gawand v/s. Shantaram Tukaram Gawand and ors. to support his contention that the delay of 77 days was not required to be condoned.

7 In my view, it is possible to accept the contention urged on behalf

of the Petitioner. It is required to be noted that the delay in the instant case is of 77 days which the Applicants i.e. the Respondent Nos.1 to 5 attribute to the fact that their advocate had informed them that they were not required to remain present until they receive notice from the Trial Court. Hence there was no reason otherwise for the Respondent Nos.1 to 5 to keep away from the proceedings except the said fact. The case of the Respondents that only after their workers were stopped from erecting safety barriers and fencing, that they became aware of some orders being passed in the suit, can be said to be a plausible reason for them in not filing the proceedings in time. It is well settled that in matters of condonation of delay a highly technical and pedantic approach is to be eschewed and an approach which furthers the cause of substantial justice is to be adopted. It is also well settled that a party should be given an opportunity to prosecute the proceedings on merits rather than being thrown out on technicalities. In the instant case it has come on record that there are other proceedings between the same parties and therefore the Respondents could have appeared in the said proceedings and since their advocate told them not to appear until they receive notice from the Trial Court that they did not appear. The said reason having commended acceptance to the Lower Appellate Court for exercise of discretion in favour of the Respondent Nos.1 to 5, this Court therefore does not deem it appropriate to interfere with the said discretion. The Lower Appellate Court has also balanced the equities by imposing costs on the Respondent Nos.1 to 5. In my

view, since the discretion is to be exercised based on the facts of a particular case, and since there cannot be any mathematical exactitude in respect of facts, the judgment of this Court in ***Vasant Vithal Gawand's*** case (supra) would not aid the Petitioner to oppose the condonation of the said delay of 77 days. Hence no case for interference in the writ jurisdiction of this Court is made out. The above Writ Petition is accordingly dismissed.

[R.M.SAVANT, J]