

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL APPLICATION NO.473 OF 2016
IN
APPEAL FROM ORDER ST. NO. 8790 OF 2016**

Ms Dilshad Bohra	..Applicant
Vs.	
Mrs. Zaitoon Abdul Hamid Antulay	..Respondent
 Mr. Pradeep Havnur for the Applicant	
Mr. Asad Bukhari for the Respondent	

CORAM : R. M. SAVANT, J.
DATE : 1st JULY, 2016

P.C.

1 The above Civil Application has been filed seeking condonation of delay of 1 year and 66 days in filing the above Appeal From Order. The reasons therefor are mentioned in paragraph 5 of the above Civil Application.

The said paragraph 5 is reproduced herein under :

5. The Petitioner states that she is the practicing advocate, due to poor financial condition, the appellant was waiting for deposits of compensation by the Respondent, which could not be deposited, the appellant has threats from the underworld not to proceed in the matter as such the Mumbai police do not entertain any complaints lodged by the Appellant, as a result of that there is a delay of about 1 year and 86 days in preferring the present appeal from order. The appellant has already lodged various complaints with the concerned police station against the Respondent. The appellant has gathered courage to file proceedings after passing of order dated 15-2-2016 in Appeal From Order No.170 of 2015. The delay is not deliberate and intentional, the circumstances mentioned hereinabove was beyond the control o the Appellant. The same

being taking into consideration required to be condoned in the interest of justice. No harm and prejudice would be caused to the Respondent if the delay is condoned and the appeal is admitted and heard on its own merits, on the contrary the Appellant would suffer irreparable loss if the delay is not condoned. Balance of convenience is also in favour of the Appellant.”

2 In support of the said case made out in the paragraph 5 the Applicant sought to rely upon certain news paper reports. The said case of the Applicant is sought to be questioned by the Learned Counsel appearing for the Respondent by filing an affidavit in reply. The case as set out in paragraph 5 is denied. The affidavit in rejoinder has been filed by the Applicant/Appellant reiterating the case mentioned in paragraph 5. The above Appeal From Order is directed against the order dated 11-11-2014 wherein the Notice of Motion was allowed only to the extent of directing the Respondent 1 to pay compensation of Rs. 25,000/- per month for the occupation of the premises. Apart from the case set out in paragraph 5, it is also the case of the Applicant that she did not have the financial wherewithal to file the instant proceedings and was awaiting the payment to be made in terms of the said order passed by the City Civil Court, Mumbai.

3 In my view, whilst considering the above Civil Application for condonation of delay this Court would not be in a position to record a finding in respect of the said allegations however since it is the case of the Applicant that the delay has occurred on account of the impediments in her way which

include financial stringency on account of non payment by the Defendant, the said reasons can be said to be the plausible reasons for the delay occurring. It is well settled that a litigant should be given a chance to prosecute the proceedings on merits rather than being thrown out on technicalities, the inconvenience that is caused to the other side can be compensated by imposition of costs. In the instant case the Defendant has already filed Appeal From Order No.170 of 2015 challenging the impugned order. Hence the said circumstance is one more circumstance in favour of the Applicant in her pursuit of seeking condonation of delay. The reliance placed by the Learned Counsel for the Respondent on the judgment of this Court in the matter of **Vasant Vithal Gawand Vs. Shantaram Tukaram Gawand (deceased) & Anr.**¹ is misplaced in view of the fact that the factual situation in both the cases is different. As indicated above the Respondent has already filed the Appeal From Order challenging the same order dated 11-11-2014, the above Civil Application is allowed and resultantly the delay of 1 year and 66 days in filing the Appeal From Order stands condoned. The Applicant / Appellant to pay costs of Rs.5000/- to the Respondent through the Advocate on record. The same to be done within two weeks from date. The above Appeal From Order to be listed along with Appeal From Order No.170 of 2015, which can be said to be a cross Appeal filed by the Respondent. The Civil Application is accordingly disposed of.

[R.M.SAVANT, J]

1 2016(2) LJSOFT 32