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

*SECOND APPEAL NO. 473 OF 2014
with
CIVIL APPLICATION NO. 1099 OF 2014*

Bharti Cellular Ltd. ... Appellant/Applicant.

V/s.

Jamir Khalil Pathan and Ors. ... Respondents.

Mr. Prabhakar Jadhav for the Appellant/Applicant.
Mr. Milind Deshmukh for Respondent 1.

CORAM : N.M. Jamdar, J.

03 May, 2016.

Oral Order :-

By this Appeal the Appellant – a Cellular Company, challenges the Judgment and order passed by the District Judge, Satara, dismissing the Application for condonation of delay of 304 days in filing an appeal against the judgment and decree passed by the Civil Judge, Junior Division, Satara.

2. On 30 October 2013 the Respondent No.1 filed a Civil Suit bearing No. 394 of 2004 in the Court of Civil Judge, Junior Division, Satara for recovery of an amount of Rs. 87,453/- from the Defendants

including the Appellant. The Respondent No.1 alleged that the Defendant No.6 was a franchisee of the Appellant – Cellular Company and inspite of rendering service to them they had not paid the amount sought for in the suit. The suit summons was served on the Appellant and the other Defendants. The Appellants - Defendant Nos.1 to 3 appeared through Power of Attorney and filed their written statement. Some Advocate appeared for the Appellant as well as Defendant No.6. The Civil Judge, Junior Division framed issues and considered the matter on merits. The learned Civil Judge came to the conclusion that the Respondent No.1 was entitled to the recovery of the amount from the Defendants including the Appellant. The Suit was accordingly decreed directing the Defendants to jointly and severally to pay the amount of Rs.87,453/- with interest at the rate of 6%. The Suit was decreed on 30 October 2010.

3. Thereafter, the Appellant filed an Appeal with an application for condonation of delay. The Appeal was filed with a delay of 304 days. It was contended that the Advocate for the Appellant had given no instruction pursis and therefore, the Appellant had no knowledge of the order and therefore there was a delay. The learned District Judge by the impugned order dated 2 January 2014 dismissed the Application.

4. The learned Counsel for the Appellant relied upon the Rules framed by the High Court under Section 34(i) of Advocates Act, 1961 to contend that an Advocate, before filing no instruction pursis, must give information to the litigant. He also relied on the decision of the learned

Single Judge in the case of *Govinda Bhagoji Kamable & Ors. v/s. Sada Bapu Kamable (Deceased) & Ors. Reported in [2005(1) All MR 272]*. The learned Counsel submitted that since the Appellant had no knowledge of the disposal of the Suit, there was a delay and the Appellant had deposited the amount in this Court and therefore, the Application be allowed and the First Appeal be restored to be heard on merit. The learned Counsel for the Respondent No.1 supported the impugned order.

5. The question is whether the discretion used by the learned District Judge in not condoning delay is illegal or perverse so as to give rise to a question of law. The Appellant is a Cellular Company of having a large turn over. It is informed that it has a full-fledged legal department. Therefore, the parameters that would apply to a rustic villager of lack of knowledge of legal procedure cannot be extended to the Appellant. The Respondent No.1 had filed a Suit for recovery of amount of Rs.87,453/- in the year 2004. As per procedure, summons has been served and the Appellant appeared in the Suit. The Appellant through a legal department ought to have been diligent in following the proceedings in the Suit. The Apex Court has laid down that merely because an Advocate is engaged, the duty of the litigant to participate in the litigation is not over. Furthermore, after the Suit was disposed of, the Respondent No.1 – Plaintiff issued notices to the Appellant alongwith the copy of the operative order for compliance and also filed a caveat in the District Court with a copy to the Appellant. Yet the Appellant did not file the Appeal in time. As regard the Rule and the decision cited by the learned Counsel for the Appellant, it has to be noticed that the Appellant as well as the

Defendant No.6 had engaged the same Advocate and if it is the case of the Appellant that the Defendant No.6 had no connection with the Appellant, then the Appellant would have distanced themselves from Defendant No.6 by engaging a different Advocate. The concerned Advocate had given letter of intimation to the Defendant No.6. Even notice is not given to the Appellant, the conduct of the Appellant after the disposal of the Suit is unexplained. The finding of fact has been recorded by the District Court that the Respondent No.1 intimated to the Appellant of the outcome of the Suit. There is therefore complete negligence on the part of the Appellant as has rightly recorded by the learned District Judge.

6. The Appellant has only adopted dilatory tactics to frustrate the claim of an individual of Rs.87,453/- by only continuing with the litigation which appears to have costed the Respondent No.1 much more than the amount involved.

7. In the circumstances, no question of law arises in this Appeal for consideration. The Appeal is accordingly dismissed. The Respondent No.1 is permitted to withdraw the amount deposited in the trial Court.

8. Civil Application is disposed of accordingly.

(N.M. Jamdar, J.)