

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.3371 OF 2016
IN
FIRST APPEAL (ST) NO.14513 OF 2016

M/s Oasis Shipping & Travel Agent
and 3 ors Applicants.

V/s.
M/s Raj Traders and ors Respondents

Mr. Yogeshwar S. Bhate, for the Applicants.
Mr. PiyushN. Shah, for Respondent Nos. 1(a) to 1(e).

CORAM : DR. SHALINI PHANSALKAR-JOSHI, J.

DATE : 22ND AUGUST, 2016.

P.C. :

1. This application is for condonation of delay of 2 years and 55 days in preferring the appeal against exparte judgment and decree dated 11.2.2014, passed by the Court of City Civil Court in S.C.No.4438 of 2012.

2. It is submitted that after the said judgment, applicant has preferred an application for modification of the order and it was modified by an order dated 29.3.2014. Against the said judgment, applicant filed an application in the trial Court itself for setting aside exparte judgment. The said application came to be dismissed as the same being not maintainable. It was dismissed on 27.7.2015. Against the said order,

applicant preferred Writ Petition bearing No.10487 of 2015. It was filed on 7.10.2015. However, as writ petition was also not maintainable, it came to be withdrawn on 12.4.2016 with liberty to file Appeal against the said judgment and decree.

3. It is urged that immediately after withdrawal of the Writ petition, present application alongwith appeal is preferred on 05.05.2016.

4. It is submitted by learned counsel for applicant that the delay in preferring this appeal was on account of wrong forum chosen by the applicant, purely on the legal advise given to him. According to him, hence there is just and sufficient cause for condonation of delay.

5. Learned counsel for respondents has opposed this application by filing written say on behalf of respondents. It is submitted that the application is devoid of merits as the applicant wants to shift blame purely on his counsel for the delay, laches and negligence on his part. He has taken considerable time in pursuing wrong remedies and only after the execution is filed by respondent No.1 and only when the partner of respondent No.1 succumbed to death, he has preferred this application alongwith First Appeal.

6. I have heard the learned counsel for appellant and respondents. Though it is true that there is inordinate delay, but considering the fact that litigant in this country is depending on the legal advise for pursuing various remedies available to him; our system being

adversary in nature, some allowance is required to be given for such delay, in preferring appeal. Otherwise also under Section 14 of the Limitation Act, time consumed in pursuing remedies in the wrong forum is required to be excluded. Moreover, to serve substantial cause of justice, matter is required to be heard on merits instead of dismissing it at the threshold on technical grounds of delay. Therefore, the delay caused in preferring the appeal in the instant case needs to be condoned for the reasons stated above.

7. However, in order to compensate the respondents to some extent at least monetarily, some costs need to be imposed so that hereinafter the applicant and his counsel will be more diligent.

8. Hence the application is allowed subject to payment of costs to the tune of Rs.10,000/- by applicant within a period of two weeks from the date of this order.

9. On failure of the applicant to pay costs within the stipulated time, application will automatically stand dismissed without further reference to this Court.

10. Application is disposed of accordingly.

[DR. SHALINI PHANSALKAR-JOSHI, J.]