

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO. 4323 OF 2016
IN
FIRST APPEAL (ST.) NO. 16451 OF 2016

Punjab National Bank	...	Applicant/Appellant.
V/s.		
The Cotton Textiles Export Promotion Council	...	Respondent.

.....
Mr. Pankaj Vijayan i/b. Mr. Vishwas R. for the Applicant/Appellant.
Mr. Karl Tamboli a/w Ms. Poorva Garg & Mr. Parikshit Barpiyari i/b.
Mulla & Mulla And Craigie Blunt & Caroe for the Respondent.
.....

CORAM : DR. SHALINI PHANSALKAR-JOSHI, J.
DATE : OCTOBER 17, 2016.

P.C.:

1. Heard learned counsel for the parties.
2. This Application is filed for condonation of delay of 121 days occurred in preferring First Appeal challenging the Judgment and Decree dated 11.01.2016 passed by the City Civil Court, Mumbai, in Summary Suit No.7467 of 2005.
3. The reason given for condonation of delay, as stated in paragraph no.3 of the Application, is to the effect that the Applicant had to seek an opinion from the Legal Department whether to challenge the impugned Judgment by way of an Appeal. The Legal Department deliberated and considered the potential impact of the Judgment and thereafter decided to prefer an Appeal considering that a similar legal issue, as involved in the present Appeal, is pending before the Honourable Supreme Court.

4. In paragraph no.4 of the Application, it is further stated that the Applicant was desirous of appointing a new Advocate for instituting and conducting the Appeal, and for that purpose, some time was consumed as the voluminous documents, papers and proceedings were not available.

5. Learned counsel for the Respondent has resisted this Application vide the affidavit-in-reply of one Mr. N. Ravindranathan, Director of the Respondent Company, by submitting that the reasons given for condonation of delay do not specify any particular cause as such. Those are the usual reasons, and hence, the Application should not be allowed, especially when already the execution proceedings are filed in the trial court and the attachment warrants are also issued against the movable and immovable property of the Applicant.

6. Considering the fact that this First Appeal, which is a statutory right to appeal, is preferred by the Appellant against the Decree passed by the trial court, and also considering that legal issue is involved in the matter, the Appeal needs to be decided on merits. It also cannot be said that the explanation given by the Applicant is not *bona fide* or totally devoid of merits or substance, and hence, in the interest of justice, the delay, which also cannot be called as inordinate, requires be condoned. Of course, considering that the Application for condonation of delay is filed after the execution proceedings are initiated and the order of attachment of the movable and immovable property of the Applicant is also passed, the Application is allowed in terms of prayer clause (a) subject to costs of Rs.10,000/- so as to compensate the Respondent.

7. The office is directed to number the First Appeal and place it for admission in due course.

8. The Civil Application is accordingly disposed of.

(DR. SHALINI PHANSALKAR-JOSHI, J.)