

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Civil Application No.3205/2016

with

First Appeal (ST) No.9961/2015

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders	Court's or Judge's orders.
Mr. Shivam Bhagwati and Shahzad Khajotia I/b. Yatin R. Shah for the Applicant	

CORAM: K.K.TATED, J.

DATED : SEPTEMBER 6, 2019

P.C.

1 Heard. This Application is for condonation of 2 years and 164 days delay in preferring the appeal challenging the judgment and award dated 27.07.2012 passed by the Bombay City Civil Court at Mumbai in S.C.Suit No.1403/2008 allowing the Respondent - Plaintiff's suit for declaration and permanent injunction.

2 The learned counsel for the Applicant submits that though they appointed the advocate in the Trial Court to protect their interest, none appeared for them when the matter was called out. He submits that not only that, the said

advocate has also failed and neglected to disclose that the order was passed by the Trial Court against them. He submits that the said Advocate, at his own had applied for certified copies but never handed over to the Applicant. He submits that for the first time the Applicant learnt about the judgment and decree passed by the Trial Court in the month of August 2014 and thereafter they immediately filed the First Appeal challenging the impugned judgment and decree. He submits that because of mistake on the part of the advocate who appeared on behalf of them in the Trial Court, the Applicant should not suffer. He submits that they have good chance of success in the matter. In support of this contention, the learned counsel for the Applicant relies on para 4 and 5 of the Civil Application which reads thus:

“4. The Applicants state that the Applicants came to know only in August, 2014 that the Hon'ble Trial Court had already decreed the suit. The Applicants were never aware about the decree passed by the Hon'ble Trial Court and hence could not take any steps in the matter. The order impugned was passed on 6th August 2012 the application for certified copy of the

order was filed only on 23rd July 2013 and the certified copy of the order was ready on 6th August 2013.”

“5. The Applicants, however, came to know of the order only somewhere in January 2015 and then approached the present advocate for filing the above appeal. the Other papers in the matter were not with the Applicants and sometime was taken by the Applicants in collecting the papers to be given to the Advocate for the Applicants for filing the present appeal. Accordingly, there has been a delay of ___ days in filing the above appeal, however, the delay is not contumacious but it is unintentional and caused due to the aforesaid circumstances.”

3 On the basis of these submissions, the learned counsel for the Applicant submits that in the interest of justice, this Hon’ble Court be pleased to condone the delay in filing the First Appeal and the matter be heard on merits. He submits that if delay is not condoned irreparable loss will be caused to them.

4 It is to be noted that in the present proceedings the Trial Court has passed the judgment and decree allowing the

Respondent - Plaintiff's suit for perpetual injunction and declaration. Operative part of the said order reads thus:

"ORDER

The suit is decreed with costs as under:

The Defendants or anybody on their behalf are restrained from dispossessing the Plaintiff from the suit property without the due process of law.

Decree be drawn up accordingly."

5 Office Note shows that the Applicant had applied for certified copies on 06.08.2013 and same was delivered to the Applicant on the same day. The First Appeal is filed on 06.04.2015. It is to be noted that in the entire Civil Application the Applicant has failed to disclose the name of the advocate who failed and neglected to inform the decision of the Trial Court to them. Apart from that there is no single letter to show that whether the Applicant had called upon their advocate to explain why he failed and neglected to inform them the decision given by the Trial Court. In any case, the explanation given by the Applicant for condonation of more than 2

years delay is not sufficient to consider the Applicant's application for condonation of delay.

6 Hence, following order is passed:

- a. The Civil Application for condonation of delay is rejected.
- b. Consequently, registration of the First Appeal stands rejected.
- c. In view thereof the Civil Application for stay of the impugned judgment and decree stand dismissed as infructuous.

(K.K.TATED, J.)