

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.1150/2015
WITH
FIRST APPEAL (ST) NO. 21258/2014
WITH
CIVIL APPLICATION NO.1151/2015

Brihanmumbai Mahanagarpalika ... Applicant

V/s.

M/s. Arco Micaver Pvt. Ltd. ... Respondent

Mr. N. V. Walawalkar, Senior Advocate with Mrs. M. R. Bhoir for the
Applicant

Mr. S. C. Naidu for the Respondent.

CORAM: K.K. TATED, J.
DATED : FEBRUARY 10, 2016

PC. :

1. Heard the learned counsel for the parties. This Application is made by the Municipal Corporation for condonation of 1 year and 259 days delay in preferring the appeal challenging the judgment and decree dated 12/09/2012 passed by the Small Causes Court, Mumbai in Municipal Appeal no.29/2005.

2. The learned senior counsel for the Applicant submits that immediately after the impugned judgment and decree was passed by the learned trial court, they applied for certified copies on 27/09/2012. He submits that the certified copies were ready for delivery on

29/09/2012 and same was collected on 01/10/2012. He submits that they filed the First Appeal on 14/07/2014.

3. The learned senior counsel for the Applicant submits that the papers and proceedings were forwarded to the appeal committee for deciding, whether it is a fit case for preferring an appeal or not. He submits that the appeal committee decided to file the first appeal some time in October 2013. Thereafter the papers were received in the office of legal department on 17/02/2014. He submits that during that period, several election petitions were filed i.e. in the month of February and March 2012. He submits that the Advocates who used to appear on behalf of them before the Small Causes Court, were busy in drafting the written statement in election petitions. He further submits that before filing the appeal on behalf of the Municipal Corporation, they have to take approval from several authorities. Therefore, there is delay on their part to file the present appeal. He submits that the Applicant has good chance of success. He submits that if the delay is not condoned, irreparable loss, harm and injury will be caused to the Applicant. On the basis of this submission, the learned senior counsel for the Applicant submits that the delay in preferring the Appeal may be condoned.

4. On the other hand, the learned counsel for the Respondent vehemently opposed the Civil Application. They filed their Affidavit-in-Reply dated 27/01/2016 to oppose the Civil Application. He submits that the Applicant has not shown sufficient cause for condonation of delay of more than 1 year. He submits that there is no explanation in

the Civil Application for the period after receipt of certified copies on 01/10/2012.

5. The learned counsel for the Respondent submits that as per judgment and decree passed by the Trial Court, the Trial Court directed the Corporation to refund the excess amount. He relies on operative part of the impugned order, which reads thus:

“The Municipal Appeal No.29 of 2005 is partly allowed.

The order passed by the Investigating Officer on 27.5.2003 fixing the rateable value at Rs.5,14,310/- w.e.f. 1.4.2001 is reduced to 50% of it i.e. Rs.2,57,155/-.

The Investigating Officer is directed to assess the rateable value of the appeal property as 50% of the rates taken as aforesaid w.e.f. 1.4.2001 and to issue the fresh bills accordingly from 1.4.2001.

The excess amount deposited by the appellant be adjusted against the future taxes by paying an interest at the rate of 6.25% p.a.

In the facts of the case the parties to bear their own costs.

Decree if any be drawn up accordingly.”

6. The learned counsel for the Respondent submits that by letter dated 12/02/2013 they forwarded a copy of the impugned judgment and decree passed by the Trial Court to the Assistant Assessor and Collector, K/East Ward and requested for revised bill and refund. As the said officer failed and neglected to take any action, the Respondent addressed reminder letters dated 24/06/2013, 25/09/2013, 23/12/2013, 18/03/2014, 02/08/2014, 22/09/2014, 29/12/2014 and 26/03/2015 to the Assistant Assessor and Collector, K/East Ward for

taking appropriate steps as per the judgment and decree passed by the Trial Court dated 12/09/2012. This itself shows that though the applicant had knowledge about the judgment and decree passed by the Small Causes Court, they failed and neglected to take steps for filing this appeal. In support of this contention, the learned counsel for the respondent relies on the judgment of the Apex Court in the matter of ***Office of the Chief Post master General & Ors. Vs. Living Media India Ltd. & Anr. AIR 2012 SC 1506***, more particularly paragraph, 6, 9, 12 and 13.

7. In that case, the Apex Court held that if sufficient cause is not shown, the applicant is not entitled to any relief for condonation of delay. On the basis of this submission and the law declared by the Apex Court, the learned counsel for the respondent submits that as the applicant failed and neglected to show sufficient cause for condonation of delay of more than 1 year and 259 days, they are not entitled to any relief in the civil application. He submits that, therefore, the civil application be dismissed with costs.

8. Heard the learned counsel for the parties at length. It is to be noted that, in the present proceedings the corporation received certified copies on 01/10/2012 and thereafter they filed the first appeal on 14/07/2014. Though the applicant in the said civil application stated that they forwarded the papers to the appeal committee to take decision whether it is a fit case to prefer an appeal or not, nowhere it is stated that when the papers were forwarded to the appeal committee, when the decision was taken by the committee and when it was

communicated to the Department. The applicant, in para 3 of the civil application stated that their Advocates were busy in filing the written statement in election petition without disclosing names of those Advocates, how many election petitions filed during that period, in how many matters written statements were filed. The said statement cannot be considered as sufficient ground for condonation of delay.

9. Considering these facts and the law declared by the Apex Court, I am of the opinion that the applicant has failed to show sufficient cause for condonation of delay. Hence, the civil application stands dismissed.

10. In view of dismissal of the civil application for condonation of delay, nothing survives in the first appeal. Registration thereof stands rejected.

11. In view of dismissal of the civil application for condonation of delay, the civil application for stay of the impugned order stands rejected as infructuous.

(K.K. TATED, J.)