

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

Amk

**CIVIL APPLICATION NO. 946 OF 2016
IN
APPEAL FROM ORDER (STAMP) NO. 21674 OF 2016**

Mr. Shamshuddin Kasamali Qureshi .. Appellant/Applicant

Vs.

M/s. Grace Construction & Anr. .. Respondents

Mr. Uday B. Nighot i/b M. B. Kale for the Appellant/Applicant.

Mr. Surel Shah a/w. Mr. Amol Kumeria, Mr. Harsh Trivedi for Respondent
Nos.1 to 3.

Ms. Mansi Patel for Respondent No.4.

CORAM : DR. SHALINI PHANSALKAR-JOSHI, J.

DATE : 23rd AUGUST, 2016.

P. C. :

1. This is an application for condonation of delay of 58 days in preferring the appeal against the order dated 06.05.2016 passed by the City Civil Court, Dindoshi, Mumbai in a draft Notice of Motion in S. C. Suit No. 55 of 2016. The condonation of delay is sought on the ground that the applicant has to engage another advocate as his advocate in the trial Court requested him to do so. According to applicant it took some time to collect the paper and approach another advocate. Hence there is delay.

2. This application for condonation of delay is strongly resisted by the learned counsel for the respondents by submitting that this is one more attempt on the part of the appellant to protract and delay the

proceeding. It is urged that the application is based on false and misleading facts. The present applicant had filed an Appeal from Order (Stamp) No. 15384 of 2016 and Civil Application (Stamp) No.15386 of 2016 which the applicant had to withdraw pursuant to order dated 08.08.2016 passed by this Court on the ground that the executant of the Power of Attorney dated 21.12.1996 i.e. Shri. Peter Drego has expired. It is urged that considering the withdrawal and dismissal of the said appeal, it can be easily made out that this another attempt is made by the applicant without showing sufficient cause to get the order of injunction or the status quo.

3. Learned counsel for the respondents has also placed reliance on the judgment of the Apex Court in the case of **Basawaraj and Anr. Vs. Special Land Acquisition Officer, (2013) 14 SCC 81** to urge that unless and until sufficient cause is made out by the party, the application for condonation of delay cannot be allowed.

4. I have considered the submissions of the learned counsel for the applicant/appellant and respondents. However, in my considered opinion, this application needs to be allowed, for the simple reason that the appeal is against the impugned order of the trial Court rejecting the ad interim relief. Admittedly the Notice of Motion is still pending before the trial Court. Learned counsel for the respondents undertakes to file reply to

the said Notice of Motion by tomorrow. In view thereof, both the parties can be directed to appear before the trial Court on 25.08.2016 where the trial Court can proceed with the hearing of the Notice of Motion itself.

5. In view thereof, the application for condonation of delay is allowed.

6. With consent of learned counsel for the parties, the appeal is admitted and heard at the stage of admission itself.

7. The appeal is disposed of with the direction to both the parties to appear before the trial Court on 25.08.2016 as may be deem fit.

8. The trial Court to decide the Notice of Motion within one week from 25.08.2016 as far as possible.

9. All the contentions of the parties are kept open.

[DR. SHALINI PHANSALKAR-JOSHI, J.]