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

*WRIT PETITION NO. 1062 OF 2013
with
CIVIL APPLICATION NO. 482 OF 2013
with
WRIT PETITION NO. 1072 OF 2013
with
CIVIL APPLICATION NO. 483 OF 2013
with
WRIT PETITION NO. 1073 OF 2013
with
CIVIL APPLICATION NO. 484 OF 2013
with
WRIT PETITION NO. 1074 OF 2013
with
CIVIL APPLICATION NO. 485 OF 2013
with
WRIT PETITION NO. 1068 OF 2013
with
CIVIL APPLICATION NO. 486 OF 2013
with
WRIT PETITION NO. 1067 OF 2013
with
CIVIL APPLICATION NO. 487 OF 2013
with
WRIT PETITION NO. 1070 OF 2013
with
CIVIL APPLICATION NO. 488 OF 2013
with
WRIT PETITION NO. 1071 OF 2013
with*

CIVIL APPLICATION NO. 489 OF 2013
with
WRIT PETITION NO. 1069 OF 2013
with
CIVIL APPLICATION NO. 490 OF 2013

Mr. Fakrubhai Mohsin Sham and Ors. ... Petitioners/Applicants.

V/s.

Mr. Dharamji Shankar Thavi and Anr. ... Respondents.

Mr. S. Shamim i/b. Shamim & Co. for the Petitioners in all Petitions and for the Applicants in all Applications.

Mr. Anoop Sharma for Respondent 1 in all Petitions and Applications.

CORAM : N.M. Jamdar, J.

29 September, 2016.

Oral Order :-

The Petitioners challenge the order passed by the learned City Civil Court Judge, Dindoshi dated 17 April 2012 dismissing the Notice of Motions taken out by the Petitioners on 5 February 2010 for condonation of delay of 12 years to set aside the order dated 23 October 1997 directing the suit be proceeded ex-parte.

2. Heard the learned Counsel for the parties. In the affidavit in support, the cause made out is the Defendants are lay persons and not aware of Court proceedings. It is stated that the Advocate, who was representing them, did not inform the

proceedings in proper manner and there were settlement talks and in the year 2008 the deponent of the affidavit had fallen sick and therefore, the written statement could not be filed in time.

3. Heard learned Counsel for the parties. The averments made in support of condonation of delay of such substantial and chronic nature, is bereft of any particulars. Though the Petitioners were aware for 13 years that order is passed and they did not even bother to check the Court records. It is placed on record by the Respondents that the Defendant Nos.2b and 2c are carrying on business for several years. They owned various shops and hotels in the prime district of Mumbai. This statement is not controverted. Therefore completely false statement is made on oath that the Petitioners are lay persons and not aware of litigation. Therefore, not only there is any cause for condonation of delay but knowingly false reason is advanced.

4. After the impugned order was passed, the conduct of the Petitioners also needs to be taken into account. Appeal from Order was sought to be filed by the Petitioners that too with delay, so notice had been issued on the application for delay. Thereafter, the delay was condoned and appeal was taken up. The Appeal was withdrawn as it was not maintainable. That there is no appeal in law available against such orders, is an established position and an attempt only

seems to have been made to somehow delay the proceedings after the Appeal was disposed off and Writ Petitions were filed. Perusal of the farad-sheet shows that the Petition has remained pending. There was hardly any attempt made to move the matter for seeking any stay of the proceedings. The Civil Application for stay was filed in the year 2013 and it was taken up for production only on 22 September 2016, on the ground that the suit is now listed for final disposal.

5. The learned Counsel for the Respondents has pointed out that since there was no stay in the proceedings, the Suit has substantially progressed and is at the final stage. The learned Counsel for the Petitioners has sought to rely upon the decision of the Apex Court in the case of *State of Nagaland v/s. Lipok AO And Ors.* reported in *2005 (3) SCC 752* and the learned Division Bench of this Court, wherein delay of much longer duration have been condoned. There is no doubt that power exist in the Court to condone delay of substantial nature provided cogent cause is made out. In the present case as stated above, not only there is no cogent cause but incorrect cause to the knowledge of the Petitioners has been sought to be put forth. In the circumstances, no case for extending the equity jurisdiction of the Court is made out. The conduct of the Petitioners at every stage is to somehow delay the proceedings. The Writ Petitions are rejected. Civil Applications are disposed of accordingly .

(N.M. Jamdar, J.)