

IN THE HIGH COURT OF JUDICATURE AT MUMBAI
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION NO.133 OF 2016

M/s. Aswani Builders through its Partner
Lal N. Aswani ... Applicant
Vs.
Jagdish Khatanmal Makhija ... Respondent

Mr. D. L. Aswani for Applicant.
Mr. V. S. Kapse for Respondent.

CORAM : R. G. KETKAR, J.
DATE : NOVEMBER 18, 2016

P.C. :

Heard Mr. Aswani, learned Counsel for applicant and Mr. Kapse, learned Counsel for respondent at length.

2. By this Application under Section 115 of the Code of Civil Procedure, 1908 (for short 'C.P.C.'), applicant, hereinafter referred to as 'plaintiff', has challenged the judgment and order dated 31.07.2015 passed by the learned District Judge-6, Thane in Civil Miscellaneous Application No.257 of 2011. By that order, the learned District Judge condoned the delay of 77 days in filing the appeal against the judgment and decree dated 30.06.2011 passed by the learned trial Judge in R.C.S.No.747 of 1997.

3. In support of this Application, Mr. Aswani strenuously contended that respondent has made false allegations against Advocate Bagwe. Advocate Bagwe did not file appearance on behalf of the respondent. Respondent engaged Advocate Mr. Shilotri who has also drafted application for condonation of delay. Respondent has made allegations

against the Advocate engaged by him as also Advocate who was not engaged by him. As the respondent has levelled false allegations, the learned District Judge was not justified in condoning the delay.

4. Mr. Aswani further submitted that the appeal is preferred only by defendant No.1, and not by defendant No.2. Appeal, therefore, suffers from non-joinder of necessary parties. He further submitted that each day delay is required to be explained. In the present case, respondent has not explained the delay, and therefore, the learned District Judge was not justified in condoning the delay. On the other hand, Mr. Kapse supported the impugned order.

5. I have considered the rival submissions advanced by the learned Counsel appearing for the parties. I have also perused the material on record. Perusal of the record indicates that Suit instituted by the applicant herein was decreed on 30.06.2011. The learned trial Judge declared that the agreement dated 01.03.1994 executed by the defendant in respect of flat No.103 in Mahalaxmi Apartment on plot No.B-2, Gat No.66 part, City Survey No.1914/3 at Kopri, Thane (East) (for short 'suit premises') has ceased to exist and stands terminated after expiry of 15 days of the suit notice dated 06.06.1997 due to breach of the terms of the said agreement, compliance of which is also mandatory obligation on the part of the defendants. The learned trial Judge also issued mandatory injunction against defendant No.1 to vacate the suit premises and handover its possession to the plaintiff forthwith among other directions.

6. Aggrieved by this decision, only defendant No.1 preferred appeal on 15.10.2011. As there was delay of 77 days in filing the appeal, he took out application for condoning the delay. By the impugned order,

the learned trial Judge has condoned the delay. In the case of ***State of Nagaland Vs. Lipok A.O.***, AIR 2005 SC 2191, it is held by the Apex Court that what counts is not the length of the delay but the sufficiency of the cause and shortness of the delay is one of the circumstances to be taken into account in using the discretion. The expression “sufficient cause” should be considered with pragmatism in a justice-oriented approach rather than the technical detection of sufficient cause for explaining every day's delay.

7. In the light of the observations extracted hereinabove as also having regard to the fact that delay is of 77 days, in my opinion, it cannot be said that the learned District Judge committed any error in allowing the application. Hence, Civil Revision Application fails and the same is dismissed. Contention of the applicant that the appeal is bad for non-joinder of the necessary parties is kept open. Order accordingly.

(R. G. KETKAR, J.)

Minal Parab