

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.3189 OF 2015
WITH
CIVIL APPLICATION NO.3190 OF 2015
IN
FIRST APPEAL (ST.) NO.24180 OF 2015

M/s. M.A. Kachwalla and Sons ... Appellants
vs.
The Board of Trustees of the Port
of Bombay ... Respondent

Mr. K.R. Bulchandani a/w. Mr. Amit Nikam i/b. M/s. Kamal &
Co., for the Appellants.
Ms. Prachi Sawant i/b. M.V. Kini & Co., for the Respondents.

CORAM: **MRS.MRIDULA BHATKAR, J.**

DATE: **26th FEBRUARY, 2016**

P.C.:

C.A. No. 3189 OF 2015 :

. This application is moved for condonation of delay of 42 days in filing the Appeal.

2. The learned counsel for the Appellants submit that the judgment and order dated 11th June, 2015 passed by the learned Judge, City Civil Court, Bombay is passed *ex parte* and the Appellants were not aware of the order mainly due to transfer of original suit from Bombay High Court to Bombay City Civil Court and therefore

there is delay of 42 days. The learned counsel for the Respondent opposes the application.

3. In view of the aforesaid submission of the learned counsel for the Appellants, the delay is hereby condoned. The Appeal be registered.

C.A. No. 3190 OF 2015 :

4. The learned counsel for the Appellants submit that pursuant to the order passed on 23rd September, 2015, 50% of the principal amount is deposited by the Appellants in this Court within the stipulated time. Thus the Appellants complied with the said order. Hence, he prayed that the interim stay be made absolute.

5. While making submission, the learned counsel for the Appellants submit that the original suit No. 3260 of 1988 was transferred on 19th March, 2014 to the Bombay City Civil Court due to enhancement of the pecuniary jurisdiction of the City Civil Court. The written statement was already on record with the documents. Thereafter, the suit proceeded *ex-parte* as there was no notice of

transfer of the suit from Bombay High Court to City Civil Court. He submits that under such circumstances, the order of Bombay City Civil Court is to be set aside and the suit to be sent back for trial.

6. On perusal of the record, it is found that the suit is decreed on 11th June, 2015. The name of the advocate for the Defendant is shown in the caption of the judgment. It is a money recovery suit filed by the Bombay Port Trust against the Defendant. The suit is very old and money recovery is pending since 1985. The Defendant appeared in the suit when the suit was pending in the High Court and he filed a written statement. However, the suit was transferred from Bombay High Court to Bombay City Civil Court due to enhancement of the pecuniary jurisdiction on 19th March, 2014. The issues were also settled by the learned Judge of the City Civil Court. As the matter was transferred on the ground of enhancement of pecuniary jurisdiction, it was necessary for the Appellants to keep track of the said matter. However, it was not done. The written statement was filed by the Appellants. It is on record. It shows that the Appellants want to contest the matter and hence it is necessary to give fair opportunity to the Appellants to contest the suit.

7. Therefore, I am of the view that at this stage, the Appeal is taken up for admission and it is disposed of with the following order:

7a) The judgment and order dated 11th June, 2015 is hereby set aside with cost of Rs. 5,000/-. The cost is to be paid to the Respondent/Plaintiff by the next date.

7b) The Appellants be allowed to cross examine the witness of the original Plaintiff. The parties be allowed to lead oral as well as documentary evidence, if any.

7c) The parties are directed to appear before the trial Court on 9th March, 2016 at 11.00 a.m. Both the parties to furnish the list of witnesses and the documents if they are relying, on the same day and cooperate the Court.

7d) The amount of Rs. 2,60,000/- which is deposited in this Court is to be invested in the nationalized bank and it is subject to the outcome of the proceeding.

7e) The learned trial Court shall endeavor to complete the trial on or before 30th June, 2016.

(MRS.MRIDULA BHATKAR, J.)