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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO. 3453 OF 2014
IN
FIRST APPEL (ST) NO. 26090 OF 2014

Sanjay Pannalal Nahar ...Applicant
Vs,
Hiralal Gulabchand Karnawat & Ors. ...Respondents

Mr. Jayprakash Shridhar Kapre for the Applicant
Mr. Rajendrakumar Nainsukh Sanghavi for the Respondent Nos. 2 & 6

**CORAM : A.S.OKA, &
C.V. BHADANG, JJ.
DATE : JANUARY 19, 2016**

PC.:

1. Heard the learned Counsel appearing for the parties. The application is vehemently opposed by the Advocate appearing for the respondent nos. 2 and 6.
2. The applicant is the original plaintiff who filed a suit for the specific performance of an agreement for sale. Apart from seeking specific performance, in the alternative, he prayed for damages in the sum of Rs.4,92,42,875/-. The learned trial Judge by the impugned judgment and decree, rejected all the prayers. However, he passed a decree for refund of a sum of Rs.6 lakhs with interest.
3. The law on aspect of dealing with the applications for condonation of delay under Section 5 of the Limitation Act, 1963

is well settled. The Court has to adopt justice oriented and liberal approach.

4. The question of condonation of delay arises only when there is a default on the part of a litigant. In the present case, for explaining delay of about 360 days the applicant has stated that after going through the impugned judgment, he got mentally disturbed when noticed that the respondents succeeded without even adducing any evidence. It is stated that later on the applicant suffered in business. On two occasions in July and August 2013, he had to undergo hospitalization. He has relied upon the relevant documents.
5. The learned Counsel appearing for the respondent No.2 and 6 relies on the decisions of Apex Court in the case of **Basawaraj & Anr. Vs. Special Land Acquisition Officer dated 22nd August 2013 in Civil Appeal No. 6975 of 2013, Esha Bhattacharjee Vs. Managing Committee of Raghunathpur Nafar Acad. & Or. decided on 13th September, 2013 in Civil Appeal Nos. 8183 – 8184 of 2013 and Mewa Ram and others Vs. State of Haryana through the Land Acquisition Collector 1986(4) SCC 151.** We have perused the said judgments. The Apex Court has reiterated the law laid down on the aspect of condonation of delay. In the light of the law, the Apex Court has dealt with the facts of the cases before it.
6. Considering the nature of the controversy in the appeal and considering the grounds set out in the application, we are of the view that there is no gross negligence, which can be attributed to the applicant. According to us, this is a fit case to condone the

delay by adopting a justice oriented and liberal approach. The contesting respondents can be compensated by ordering the payment of exemplary cost.

7. Hence, a case is made out for the condonation of delay. Only the respondent Nos.2 and 6 have contested the application. The respondent Nos. 2 and 6 will be entitled to total costs quantified at Rs.25000/-.

8. Accordingly, rule is made absolute in terms of prayer clause (a) subject to the applicant paying the costs of Rs.25000/- to the respondent Nos. 2 and 6 within a period of six weeks from today. Payment of costs will be a condition precedent.

(C.V. BHADANG,J.)

(A.S.OKA,J.)