

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

**CIVIL APPLICATION NO. 72 OF 2016
IN
FIRST APPEAL (ST) NO.32346 OF 2015
IN
SPECIAL CIVIL SUIT NO.5795 OF 2005**

Industrial Finance Corporation of India Applicant

In the matter of

Industrial Finance Corporation of India Appellant

Vs.

The Maharashtra State Co-operative Bank Ltd. Respondent

Mr. Rohit Gupta alongwith Mr. Nikhil Rajani i/by M/s V. Deshpande & Co. for the Applicant.

Mr. Vishal M. Dhamal i/by Mohan Dhamal, for the respondent.

Coram : Smt. R.P. SondurBaldota, J.

Date : 16th April, 2016

P.C.

1 This Civil Application is for condonation of delay of 406 days in filing the First Appeal to challenge exparte decree dtd. 11th September, 2014 passed by the Bombay City Civil Court in S.C. Suit No.5795 of 2005. The present Civil Application alongwith the First

Appeal was filed on 16th December, 2015. The application is opposed by the respondent.

2 The undisputed facts are that the suit had originally been filed in this court and the writ of summons therein was duly served upon the applicant. Thereafter the applicant entrusted the matter to the advocate empanelled with it, who filed his Vakalatnama in the office of this court. That Vakalatnama remained under objection and the appearance of the advocate was never shown on the board. Later, on enhancement of pecuniary jurisdiction of the Bombay City Civil Court, the suit came to be transferred to that court. No appearance was entered in that court on behalf of the applicant. After adjournment of the suit from time to time, the same came to be decreed exparte on 11th September, 2014.

3 In it's application for condonaiton of delay, the applicant at para 4 claims that it noticed about the impugned decree only “on or about October, 2015” and at the same time the concerned officers of the applicant learnt for the first time that Vakalatnama filed by the advocate had remained under office objections since it's filing. Then the concerned officers took up the matters with the higher authorities and sought instructions for filing of the appeal. In the third week of November, 2015, the officers of the applicant instructed their present attorneys to prepare the appeal. Accordingly, the appeal was prepared in the month of December and filed alongwith the application of condonation of delay on 16th December, 2015. It is contended in the

application that the delay in filing the appeal is not intentional but it is due to :

- i) The vakalatnama of the advocate remaining under objections;
- ii) No intimation of transfer of the suit from this court to the Bombay City Civil Court by the advocate for the applicant; and
- iii) non-intimation of the impugned order and judgment till October, 2015.

The applicant had applied for certified copy of the impugned judgment and decree on 18th November, 2015. The same was ready for delivery on 7th December, 2015 and collected on the same day.

4 The respondent has filed a detailed affidavit-in-reply to oppose the application, in which it is stated that after the exparte decree was passed, the respondent had filed Caveat No.3515 of 2015 in this court and served notice of the caveat dtd. 20th July, 2015. The service was effected on 23rd July, 2015. Thus the applicant had learnt about the exparte decree atleast on 23rd July, 2015. In that circumstance, the statement in the application for condonation of delay of the knowledge of the decree as in the month of October, 2015 is a false statement. Thus, according to the respondent, there is not only no case is made out for condoning the delay but the applicant is guilty of suppression of material facts from the court and making false statement on affidavit.

5 The applicant in it's affidavit-in-rejoinder admits service of caveat by the respondent on 23rd July, 2015. It however, claims that as

the caveat was routed through various departments of the applicant, by that time, the concerned department in charge to handle the matter, received the same, it was about the end of July, 2015. Thus it is admitted in terms in the affidavit-in-rejoinder that the applicant became aware of the judgment and decree atleast towards the end of July, 2015. According to it, it thereafter obtained an ordinary copy of the judgment and decree to take up the matter with it's higher authorities. It has been further contended in the affidavit-in-rejoinder that the applicant is a financial institution and has inter-department protocols and hierarchy in following up the matter. That procedure took some time. Also since the applicant was not kept informed of the matter by it's earlier advocate, it should not be ousted from statutory remedy available in law.

6 The delay in filing of the first appeal by the applicant is substantial. The applicant is required to explain the delay for the entire period i.e. from the date of the decree till filing of the application herein. But the application as filed is seen virtually without any explanation. Though the advocate from the applicant's own panel is sought to be held responsible for non-attendance to the matter, his name is not disclosed anywhere. It is not even known whether any action is taken against him or whether he continues to be on the panel of the applicant. The application does not disclose the specific date of knowledge of the exparte decree. The applicant has resorted to quibbling by stating that it learnt about it "on or about October, 2015". As seen from the affidavit-in-reply and affidavit-in-rejoinder, the claim of the applicant of knowledge in the month of October, 2015, is false.

The applicant had learnt about the exparte decree on 23rd July, 2015, when notice of caveat was served upon it. If the starting point of the period of limitation for filing the appeal is to be taken as the knowledge of the applicant, the same would be 23rd July, 2015. The applicant has offered no explanation for the months of July, August and September. Perusal of the record shows that despite the knowledge on 23rd July, 2015, application for certified copy of the exparte decree was made as late as 18th November, 2015. There is no explanation for this delay. Even if the claim of knowledge of October, 2015 is to be accepted as per the application itself, no diligence has been shown by the applicant in moving in the matter for the purpose of filing the appeal. Thus, the applicant has not only not made out any case for condonation of delay, but is guilty of suppression of material facts and making false statement on oath. Hence, the application is dismissed with costs. The applicant shall pay costs quantified at Rs.25,000/- to the respondent. In view of dismissal of the application for condonation of delay, the Civil Application does not survive. The same is accordingly disposed off.

(Smt. R.P. SondurBaldota, J)