

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL APPLICATION NO.795 OF 2016
IN
APPEAL FROM ORDER NO.622 OF 2016

Shaikh Jinjnisa @ Azizulnisa ...Applicant/Appellant
Vs.
Brihanmumbai Mahanagarpalika & Anr. ...Respondents.

Mr. Shrishail Sakhare, Advocate for Applicant/Appellant.
Ms. Madhuri More , Advocate for Respondents.

CORAM: R.M.SAVANT, J.
DATED : 11th July, 2016

P.C.

The above Civil Application has been filed for condonation of delay of two years, one month and 21 days in filing the above Appeal From Order. The above Appeal From Order has been directed against the order dated 22.10.2013 passed in Notice of Motion No.2924 of 2010 in L.C.Suit No.2160 of 2010 filed by the Applicant. The said delay of two years one month and 21 days in filing the appeal is sought to be explained by way of averments made in paragraphs 6 to 8 of the Civil Application.

2 In paragraph 6, it has been averred that the Applicant was involved in prosecuting S.C.Suit No.1148 of 2001 filed by her against the Respondent No.2 herein i.e. Ravi Ashish Land Developers and she was busy in conducting the said suit. It is further averred that she succeeded in the said

suit and, therefore, she was under an impression that no action would be taken by the Municipal Corporation of Greater Mumbai in respect of impugned notice dated 13.10.2010.

3 In paragraph 7, it has been averred that she had to visit Village: Basti in Uttar Pradesh in May, 2015 on account of death. It is further averred in the said paragraph that there were religious festivals like Ganpati, Dassera and Diwali and it is after the Diwali festival, she came to Mumbai in November, 2015.

4 In paragraph 8, it has been averred that after her return to Mumbai, the Respondent Nos.1 and 2 started to harass her and are trying to dispossess her from the suit premises. It is further averred that she is receiving threats from the office of Municipal Corporation of Greater Mumbai as regards the dispossession. It is thereafter averred that she approached her advocate who was appearing for her in the lower Court i.e. the Trial Court who advised her to challenge the impugned order passed in the Notice of Motion in this Court. It is thereafter that she applied for certified copy of the impugned order on 14.12.2015, which was received by her on the same day and it is thereafter she filed appeal. Hence, the said delay of two years one month and 21 days has occurred in filing of the above appeal. It has also been averred in the Civil Application that she is 50 years old and illiterate and she is not having any

knowledge of law.

5 The said case of the applicant was sought to be reiterated by the learned counsel appearing for the applicant. In so far as the reasons mentioned in the Civil Application are concerned, they would have to be considered in the context of the facts that the impugned order is dated 22.10.2013. Hence, going by the case of the Applicant that she had gone to her native place in May, 2015 and has returned to Mumbai in November 2015, her going to the native place is, therefore, a good one year and seven months from the date of the order. The said delay has not been explained. The Applicant is also not diligent as she has applied for certified copy only on 14.12.2015. It is also required to be noted that the Notice of Motion filed by the Applicant has been rejected also on the ground that the Applicant's husband is going to be allotted permanent alternate accommodation for residential purpose. The Trial Court has also recorded a finding in the order that is sought to be impugned that the Applicant by illegal encroachment and extension has thereby obstructed implementation of Slum Rehabilitation Scheme. In my view, therefore, both on the ground that the reasons mentioned in the application can hardly be said to constitute sufficient cause so as to justify the said huge delay, as also on the ground that there is no merit in the challenge to the impugned order passed in the Notice of Motion, reliefs sought in the above Civil Application cannot be granted. The Civil Application is, accordingly, rejected. In view of rejection of

the Civil Application, the Appeal From Order which suffers from delay does not survive and to accordingly stand disposed of as such.

(R.M.SAVANT, J)