

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

**NOTICE OF MOTION NO. 2585 OF 2012
IN
APPEAL (LDG.) NO. 737 OF 2012
IN
SUIT NO. 1990 OF 1989
WITH
NOTICE OF MOTION NO. 2352 OF 2012
IN
APPEAL (LDG.) NO. 737 OF 2012**

Sheth Developers Private Limited ... Applicant.
(Org. Appellant)

In the matter between :

Sheth Developers Private Limited ... Appellant.
V/s.

Byramjee Jeejeebhoy Private Limited & Anr. ... Respondents.

Mr. D. D. Madon, Senior Counsel a/w. Aditya Shiralkar and
Deepali Khare I/by Shiralkar & Co. for the Applicant/Appellant.

Mr. Kishore Jain I/by Sweta Jain, Advocate for Respondent
No.1.

**CORAM : V. M. KANADE AND
MRS.SWAPNA JOSHI,JJ.**

DATE : 08th SEPTEMBER, 2016

P.C. :

1 Heard learned senior counsel Mr. Madon appearing
on behalf of the Applicant/Appellant and the learned counsel
Mr. Kishore Jain appearing on behalf of Respondent No.1.

2 Notice of Motion No. 2585 of 2012 is taken out for seeking leave to file Appeal by condoning the delay in filing the Appeal. It is submitted on behalf of the Applicant that the Suit filed by Respondent No.1 (original Plaintiff) against Respondent No.2 (original Defendant) was decreed on 26th August, 2008. According to the learned counsel appearing on behalf of the Applicant the said decree was obtained by Respondent No.1 in collusion with Respondent No.2. As a result of which the property which is in their possession will be handed over to the original Plaintiff in the execution proceedings. It is submitted that the Chamber Summons No. 2148 of 2011 taken out by the Respondent No. 1/Plaintiff in execution application no. 186 of 2009 was served on the Applicant on 4th January, 2012. It is the case of the Applicant that settlement talks were going on between January, 2012 to August, 2012 and after the settlement talks failed, an application for certified copy of the entire papers of the proceedings was filed on 13th August, 2012 and the copies were delivered on 3rd September, 2012. It is submitted that actual date of proper knowledge was 4th January, 2012 after service of the execution proceedings and, therefore, there is the delay of 280 days. It is submitted if date of the decree is taken into consideration then delay will be of 1476 days.

3 On the other hand, the learned counsel appearing on behalf of the Respondent No.1 submitted that the

applicants were aware of the decree when they obstructed the execution of the decree in November, 2011. According to the Respondent the settlement talks failed in March, 2012. As such it is submitted that, therefore, there is gross unexplained delay in filing of the Appeal. It was submitted that the applicant has filed several cases in this court and were aware that the Appeal has to be filed in time. It is submitted that this is not a fit case where the delay can be condoned.

4 It is not in dispute that the settlement talks were going on between the parties for some time. Secondly, the case of the Applicants is that the Respondents were aware that the Applicants were in possession of part of the property and they were not added as defendants; and thirdly, the Applicants contend that the collusive decree was obtained by the Plaintiff. Though these allegations are denied by the Respondents, we are of the view that the Appeal will have to be heard on merits. Liberty should be granted to the Applicants/Appellants to establish their case. Delay, therefore, caused in filing of the Appeal is condoned. Leave to file the Appeal is granted.

5 It is the case of the Applicants that they were proper and necessary party to the suit and should yet without joining them as Defendant, a decree was obtained by the

Respondent No.1. Therefore, the Notice of Motion No. 2585 of 2012 is allowed. Leave to file Appeal is granted.

6 Place the Appeal on admission board on 5th October, 2016.

7 In the meantime, the decree passed by the learned single Judge is stayed.

8 Filing of appeal paper books is dispensed with. Liberty is granted to the Respondent to file an additional compilation of documents.

(MRS.SWAPNA JOSHI,J.)

(V. M. KANADE,J.)

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