

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

**CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.81 OF 2017
IN
CRIMINAL APPEAL (STAMP) NO.44 PF 2017**

Jeshal Jitendra Sheth

)...Applicant

V/s.

State Of Maharashtra & Ors.

)...Respondents

Ms. Shaista Pathan i/by Y and A Legal, Advocate for the Applicant.

Mr. S.V.Gavand, APP for the Respondent - State.

CORAM : A. M. BADAR, J.

DATE : 30th MARCH, 2017.

P.C. :

This is an application for condonation of delay of about 2 years and 20 days in filing an appeal for challenging the orders dated 23.1.2013, 12.5.2016 and 1.7.2016 passed by the Special Judge constituted under the Maharashtra Protection of Interest of Depositors (In Financial Establishments) Act, 1999 (For short 'MPID Act') in Miscellaneous Application No.13 of 2012 in MPIP Case No.14 of 2012.

2 Heard the learned advocate appearing for the applicant. She argued that the applicant was vaguely aware that his ancestral property is under dispute in the case arising out of the MPID Act. She further argued that the applicant was in the United States of America right from July, 2007 till March, 2016 and he had settled at the United States of America. It is further argued that the applicant came to know about the subject matter after he received telephone call from one of his friend's brother in the end of September, 2016 to the effect that someone has purchased his flat and insisting on taking over possession of garage which was sold to him a way back in the year 2001. The applicant was not knowing advocates in Mumbai and, therefore, it took sometime to seek legal advice. Therefore, according to the learned counsel for the applicant, there is delay in filing an appeal challenging the order passed by the Designated Court under the MPID Act.

3 The learned APP opposed the application by contending that no 'sufficient cause' has been demonstrated for condoning the delay. None appeared despite service on behalf of

the respondent nos.2 and 3.

4 I have carefully considered the rival submissions so advanced and also perused impugned orders. It is not in dispute that father of the present applicant is an accused in MPID case no.14 of 2002. It is seen from the records that accused persons in that case are being prosecuted for collecting fixed deposits from 116 investors to the tune of Rs.1,00,80,000/- and committed fraudulent defaults in repayment of deposits with interest and other benefits. It is also seen that flat in question came to be mortgaged by the accused in that case who happens to father of the present applicant in favour of the respondent no.3-Kapol Co-operative Bank which extended cash credit facility to the firm of accused namely, M/s. Cosmos Publicity and Display. Amount of Rs.4,77,47,646 is stated to be outstanding from the said firm. The Designated Court, therefore, by order dated 23.1.2013 had directed that attached flat be sold. Report was also called under Sections 4 and 5 of the MPID Act. It is also seen from the record that flat was then put up for auction and highest bid of highest bidder came to be accepted. Ultimately amount was released and

it is ordered to be disbursed amongst depositors.

5 The applicant is son of one of the accused involved in the MPID Case No.14 of 2002. As such, he cannot be heard to say that he was not aware of the proceedings before the Designated Court and, therefore, he could not challenge the order passed by the Designated Court within prescribed time. Averments made in the instant application to the effect that the applicant was only vaguely aware of the fact that ancestral property was under some attachment in legal proceedings by itself goes to show that the applicant was well aware of the pendency of the proceedings. However, it is seen that he has not taken necessary care to keep track of those proceedings and to challenge the orders passed by the Designated Court within time. Such conduct on the part of the applicant cannot be said to be bonafide conduct and resultant delay cannot be said to be attributable to the 'sufficient cause'. In this view of the matter, as no sufficient cause to demonstrate, the application is dismissed.

(A. M. BADAR, J.)