

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

**CIVIL APPLICATION NO. 2049 OF 2016  
IN  
FIRST APPEAL NO. 1399 OF 2010**

Brihan Mumbai Municipal Corporation ...Applicant/Appellant

*Versus*

Smt. Suman Govind Junar And Anr. ...Respondents

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Ms Kavita Anchan i/b M/s. M.V. Kini & Co. for the  
Applicant/Appellant.

Mr.T.J. Mendon for the Respondents.

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**CORAM : M. S. SONAK, J.**

**DATE : 24 MARCH 2017**

**P.C.**

1. This Civil application seeks restoration of the First Appeal. The Application is filed after four years and 195 days. The applicant has also applied for condonation of delay in this matter.

2. Ms.Anchan, the learned counsel for the appellant points out the circumstance in which the direction issued by this Court for filing of paper book was not complied with. She points out that the application for restoration, according to the records of the applicant was filed some time in the year 2010 itself. However, she submits

that since such application was not traceable in the records of this Court, a fresh application was taken out and therefore, as a matter of abundant caution, the Civil Application for condonation of delay is applied for.

3. On the other hand Mr.Mendon, the learned counsel for the respondents-claimants submits that only a praecipe was taken out and that there never was an application was filed for restoration. He submits that the delay is inordinate and the same should not be condoned. He points out that interim orders were obtained and thereafter, the applicant has delayed the matter. He further points out that it is only after the execution proceeding was taken out that the present application has been filed.

4. Even if, the submissions of Mr.Mendon are to be accepted as correct, then it does appear that atleast a praecipe was taken out in the year 2010 for seeking restoration. It is possible that there was some confusion with regards to the actual Civil Application. It is possible that, since, the praecipe was on the records of the applicant, it was presumed that even the Civil Application has been duly lodged. Taking into consideration, all these aspects, the delay can be condoned and appeal can be

restored, however, subject to payment of cost by the appellant.

5. Accordingly, the delay is condoned. The Civil application is made absolute in terms of prayer clauses (a) and (b), however, subject to to the applicant, paying cost of Rs.20,000/- to the respondents. Such cost to be either paid or deposited in this Court within a period of two weeks from today.

6. In case of any default, this Civil Application shall be deemed to have been dismissed.

7. The Civil Application is disposed of accordingly.

**(M. S. SONAK, J.)**