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

***SECOND APPEAL NO.728 OF 2017
WITH
CIVIL APPLICATION NO.659 OF 2017
IN
SECOND APPEAL NO.728 OF 2017***

Shantaram Raghunath Raut

...Appellant.
(Original Plaintiff)

Versus

1. City Industrial Development Corporation
2. Pratap Damodar Raut

...Respondents
(Original Defendants)

Mr.K.S.Patil, for the Appellant.

Mr.Saurabh Oka, for the Respondent No.2.

CORAM : REVATI MOHITE DERE, J.

DATE : 9th OCTOBER, 2017

P.C. :

1. Heard learned Counsel for the parties.
2. By consent, the Second Appeal is taken up for hearing at the admission stage, since it involves a short question of law as noted hereinbelow.

3. By this appeal, the appellant has impugned the Judgment and Order dated 29th May, 2013, passed by the learned District Judge-2, Vasai in Civil M.A.No.20 of 2013, thereby confirming the Judgment, Order and Decree dated 16th January, 2013 passed by the learned Joint Civil Judge Junior Division, Vasai in Regular Civil Suit No.33 of 2014.

4. The appellant is the original plaintiff. The appellant had filed Regular Civil Suit No.33 of 2014 seeking permanent injunction, which was dismissed for want of prosecution vide order dated 1st March, 2012. The respondent no.2 (original Defendant No.2) had also filed a counter claim and had sought mandatory injunction. The said counter claim proceeded and evidence was recorded. The learned Joint Civil Judge, Junior Division, Vasai vide Judgment, Order and Decree dated 16th January, 2013, allowed the counter claim filed by the respondent no.2 (original Defendant No.2) with costs. The learned Judge directed the defendant no.1 i.e. CIDCO to initiate action against the appellant (original plaintiff) as per their notice dated 23rd April, 2003, for removal of the unauthorised construction or otherwise as per rule, within one month from the date of the order. The costs of the suit was to be borne by the plaintiff (appellant) and the

defendant no.1 (respondent No.2) equally amongst themselves and was to be paid to the defendant no.2 (respondent No.1).

5. Thereafter, the appellant filed a Review Application before the learned Civil Judge, Junior Division, Vasai, in April, 2013, which was dismissed vide order dated 30th April, 2013. Pursuant thereto, the appellant filed an Appeal challenging the Judgment and Decree dated 16th January, 2013, passed by the trial Court, alongwith an application seeking condonation of delay in filing the said appeal. The delay sought to be condoned was of 90 days. The Appellate Court, after hearing the parties was pleased to reject the said application seeking condonation of delay, as a consequence of which, the First Appeal was also dismissed.

6. The only short question of law involved in this appeal is whether, in the facts, the Appellate Court was justified in rejecting the application seeking condonation of delay on the ground of limitation ?' The answer is in the negative.

7. Learned Counsel for the Respondent No.2 submitted that the application seeking condonation of delay is bereft of details. He submitted that the applicant is in the habit of filing frivolous applications, which were clearly not maintainable and the prayers sought in such applications were clearly incomprehensible. Mr.Patil, learned counsel for the appellant, on instructions of the appellant, who is present in the Court states, that the appellant will not file any irrelevant and incomprehensible applications, failing which, the appropriate Court would be at liberty to levy appropriate costs on the appellant.

8. Admittedly, it is the appellant's son, who had filed the delay condonation application and the same was not filed, through an Advocate. In the said delay condonation application, it is stated that after the matter was heard by the trial Court, the appellant was waiting for the order, however, suddenly in the month of January/February, 2013, one Miscellaneous Application No.71 of 2009 was transferred to another Court; that on enquiry to the Court, they learnt about the Judgment; that they filed a Review Petition and also filed written arguments in the said Review Petition on 30th April, 2013, however, the same was rejected. The delay

caused in filing the appeal does not appear to be either intentional nor deliberate nor malafide. Sufficient cause has been shown for condoning the delay. Thus, in the facts and in the interest of justice, the Appellate Court ought to have been condoned the delay of 90 days caused in filing the first appeal.

9. The Second Appeal is accordingly allowed and the delay caused in filing the first appeal in the Appellate Court is condoned. Order passed by the learned District Judge-2, Vasai in Civil M.A.No.20 of 2013, is quashed and set aside. The First Appeal is restored back to its original file. The appellant to pay costs of Rs.15,000/- to the respondent No.2 within 4 weeks from today. Condition precedent. In the meantime, the execution proceedings are stayed, till the hearing and final disposal of the First Appeal.

10. The hearing of the first appeal before the Appellate Court is expedited. The learned Judge to decide the case, as expeditiously as possible and preferably within 6 months from the date of receipt of this order.

11. Learned Counsel for the Appellant, on the instructions of the Appellant, who is present in Court states, that the appellant will co-operate in the conduct of the First Appeal and will not seek unnecessary adjournments. The appellant to also abide by the statement made by him through his Advocate in para 5.

12. Second Appeal is disposed of in the above terms.

13. In view of the aforesaid, the Civil Application No.659 of 2017 does not survive and the same is also disposed of.

14. All concerned to act on the authenticated copy of this order.

(REVATI MOHITE DERE, J.)