

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

WRIT PETITION (ST) NO.10279 OF 2017

M/s Thakoor Constructions

.... Petitioners

versus

Saraswati Lakhu Manchekar & 12 Ors.

... Respondents

.....

- Mr.Rahul Gaikwad a/w Amit Karkhanis & Suparna Holamagi i/b. Kay Legal & Associates, for the Petitioners.
- Mr.Kunal Bhanage, for the Respondent Nos.1 and 2.
- Mr.Amrish Thakoor, Partner of the Petitioner present.

CORAM : R.M.SAVANT, J.

DATE : 20th APRIL, 2017.

P.C. :

1. The writ jurisdiction of this Court is invoked against the order dated 30/01/2017 passed by the Appellate Bench of the Small Causes Court, Mumbai, by which order the Application Marji No.15/17 filed for condonation of delay in filing the Revision Application (St) No.72/17 came to be rejected.

2. It is not necessary to burden this order with unnecessary details. Suffice it would be to state that the Appellate Bench of the Small Causes Court by order dated 07/05/2016 struck of the defence

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of the Petitioner by taking recourse to Order XXXIX Rule 11 of the Civil Procedure Code. The defence was struck off on the ground that the Petitioner had not complied with the order passed by the trial Court as confirmed by the Appellate Bench of the Small Causes Court in the matter of restoration of essential supplies which interalia included the electricity supply. There is no dispute about the fact that the Petitioner has taken steps to get the electricity supply restored. The above application bearing Marji No.15/17 for condonation of delay in filing the Revision Application. The case made out is that the applicant i.e. Petitioner herein was not aware of the said order dated 07/05/2016 passed by the Trial Court and became aware of the said order much later. The said foundation of the applicants was questioned by the Respondents by filing a reply. The Appellate Bench of the Small Causes Court having regard to the recording made in the Roznama of the suit on the preceding dates, did not deem it appropriate to accept the justification sought to be given for the said delay of 162 days and in fact came to a conclusion that the explanation is belied by the recording made in the Roznama.

3. The sum and substance of the finding of the Appellate Bench of Small Causes Court was that the affidavit filed on behalf of

the applicant i.e. the Petitioner herein was not in consonance with the recording made in the Roznama. The Appellate Bench of the Small Causes Court which has the jurisdiction to hear the Revision Applications, accordingly rejected the application.

4. Having heard the learned counsel for the parties, in my view, case for condonation of delay of 162 days in filing the Revision Application is made out. The explanation sought to be given in the affidavit in support of the application can be attributed to a wrong advice given to the applicant in so far as the ground set out in the said application is concerned. In a matter as serious as striking of the defence of a defendant in a suit as also considering the fact that the electricity supply is now sought to be restored, one final indulgence is required to be shown to the Petitioner notwithstanding the fault that the Appellate Bench of the Small Causes Court has found with the application.

5. The learned counsel for the Petitioner states that steps have been taken for restoration of the supply of electricity by depositing the amount with the BEST. The learned counsel for the Petitioner on instructions of the partner of the Petitioner Mr. Amrish Thakoor

assures the Court that the electricity would be got restored expeditiously and not later than two weeks from date.

6. In that view of the matter, the impugned order is required to be quashed and set aside and accordingly quashed and set aside. The Marji application No.15/17 would stand allowed. In the facts and circumstances of the case, the Petitioner to pay the costs of Rs.5,000/-. Costs to be deposited with the Maharashtra Legal Aid Fund within one week from the date and evidence to be filed in the Registry. The Petition is allowed to the aforesaid extent and is disposed of.

7. Needless to state that the main application i.e. the Revision Application would be tried on its own merits and in accordance with law.

(R.M.SAVANT, J.)