

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL APPLICATION NO. 2220 OF 2002
AND
CIVIL APPLICATION NO. 1532 OF 2016
IN
FIRST APPEAL (ST) NO. 11584 OF 2001

Jehangir R. Irani .. Applicant
vs.
Mrs. Zarina Rustom Irani and ors. .. Respondents

Mr. M.A. Haindaday for the Applicant.
Mr. Vishal Kanade i/b Raj Baid for Respondent Nos.10,12,13 and 14
and heirs of Respondent Nos.9 and 11.
Mr. R.R. Sharma for Respondent Nos.1,5 and 6.
Mr. D.K. Patil, Section Officer from Court Receiver's office present.

CORAM : M. S. SONAK, J.
DATE : 22 FEBRUARY 2017.

P.C. :-

1] Civil Application No. 2220 of 2002 seeks restoration of the appeal, which was dismissed for non-clearance of office objections way back in the year 2001. The application for restoration was taken out in May 2002. The same was barred by limitation. However, no application for condonation of delay was filed along with. As a result, Civil Application No. 2220 of 2002, again, remained for office objections and could not be taken up for all these years. In the facts and circumstances of the present case, the non filing of application for condonation of delay and consequent, inability to take up the civil application for restoration for all these years, cannot be said to be completely innocent. This is because, in the meanwhile, from 2004 onwards, the applicant has been enjoying the benefit of ad-interim order granted by this court restraining the execution of the

impugned decree. In terms of this ad-interim order, the applicant has continued to operate the business of the firm, which is ordered to be dissolved in terms of the impugned decree and that too, upon payment of sum of Rs.15000/- per month with the Court Receiver.

2] If the reasons set out in Civil Application No. 2220 of 2002 are perused, a case is made out for restoration of the appeal subject to payment of costs. Similarly, if the reasons set out in Civil Application No. 1532 of 2016 are perused, even then, some case is made out for condonation of delay, again, subject to payment of costs. However, it is apparent that the applicant has delayed the matter unreasonably by not taking timely steps and further, has obtained advantage to himself, on the basis of such delay. This is the factor which is required to be considered against the applicant.

3] Mr. M.A. Haindaday, learned counsel for the applicant, has, however, taken instructions from the applicant and the applicant has offered to pay costs of Rs.5 Lakhs within two weeks from today for restoration of the appeal. Although, this is the case of negligence on the part of the applicant in not even moving the civil application for expeditious disposal, in the meanwhile enjoying benefit of ad-interim relief, such negligence is not sufficient to deny to restoration of the appeal, which can always be subject to payment of costs. Since the applicant has himself offered to pay costs of Rs.5 Lakhs, which, in the facts and circumstances of the present case, appears to be appropriate, Civil Application No.2220 of 2002 and Civil Application No. 1532 of 2016 are allowed. The delay is condoned and First Appeal (St.) No. 11584 of 2001 is restored. Such

restoration is subject to deposit of costs of Rs.5 Lakhs by the applicant in this court within a period of two weeks from today. In case, such costs are not deposited within a period of two weeks from today, the civil applications shall stand dismissed without any further reference to the court.

4] It is clarified that the restoration of the appeal, is not to be construed as restoration of the ad-interim order dated 9 December 2004. The ad-interim order dated 9 December 2004 has already been vacated by the order dated 1 April 2016 after taking cognizance of the conduct of the applicant. However, now that the appeal is being restored, the application seeking interim relief is also restored and the same will be heard and disposed of on its own merits, at the stage of consideration of the matter for admission and grant of an interim reliefs. Such stage will arise only the amount of costs will be deposited within two weeks from today.

5] Accordingly, the two civil applications are disposed of in the aforesaid terms. In case, the amount of costs are deposited on or before 8 March 2017, place the main appeal and the civil applications therein for further consideration on 14 March 2017 on supplementary board.

(M. S. SONAK, J.)