

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

**CIVIL APPLICATION NO. 1794 OF 2015
IN
FIRST APPEAL (ST) NO. 13067 OF 2015
WITH
CIVIL APPLICATION NO. 1795 OF 2015
IN
FIRST APPEAL (ST) NO. 13067 OF 2015**

Shipping Corporation Of India Limited
(a Government Of India Enterprise)

And Ors.

...Applicant/Appellant

Versus

Mr. Shripad Vithal Paranjpe

...Respondent

**WITH
CIVIL APPLICATION NO.851 OF 2017
IN
FIRST APPEAL (ST) NO.13067 OF 2015**

Mr. Shripad Vithal Paranjpe

...Applicant/Appellant

Versus

Shipping Corporation Of India Limited
(a Government Of India Enterprise)

And Ors.

...Respondent

Mr.Abhinav Chandrachud a/w Mr.Kunal Chheda i/b M/s. M.V. Kini
& Co. for the Applicant/Appellant.

Mr.Kunal Kumbhat a/w Mr.Prabal Jain i/b Ms.Sunanda Kumbhat for
the Respondent.

**CORAM : M. S. SONAK, J.
DATE : 27 MARCH 2017**

P.C.

1. Heard Mr.Chandrachud for the appellant and

Mr.Kumbhat for the respondent.

2. There is a delay of 384 days in instituting this First Appeal. In the Civil Application which was taken out on 11 April 2014, there was hardly any explanation set out. In the typed version it was suggested that the delay is of 27 days but the same was corrected in ink to indicate that the delay is 1 year and 45 days.

3. The Division Bench, on 4 August 2015, had made the following order.

“We find that there is hardly any explanation for delay of more than one year. Only by way of indulgence, we permit additional affidavit to be filed for explaining the delay. Additional affidavit shall be filed within a period of two weeks from today. Place the application on 26 August 2015.”

4. In pursuance of the aforesaid order, Mr.Ajit Latke, Court clerk of the appellant's Solicitors M/s.M.V. Kini and Co., has filed an affidavit. Such an affidavit was not filed within a prescribed period of two weeks and was filed a little later.

5. In paragraph No.3 of the affidavit, the clerk, has stated that the First Appeal, was infact presented in the Registry on 13-04-2014. On that date, the delay in the institution of the appeal, was only 27 days. It is however stated that the Computer Section of the Registry after checking the papers returned the same, since, the appeal was not accompanied by a copy of decree. The clerk has

then stated that necessary intimation was sent to the appellant requiring them to furnish the copy of the decree. Due to pressure of work, the clerk admits that he lost the track of the matter.

6. In paragraph No.4 of the affidavit, the clerk has stated that it appears to him that the appellants requested the earlier advocate that is earlier solicitors, i.e. Mulla and Mulla Company to obtain a copy of the decree. Such decree was obtained by the earlier solicitors Mulla and Mulla Company on 15-03-2014 but the appellant collected the copy of the same only on 07-09-2014. The same was forwarded to the present solicitors on 25-09-2014. The clerk has stated that he was on leave and resumed duty on 06-10-2014. He has further stated that from 06-10-2014 to 29-04-2015, the clerk did not notice the copy of the decree and it is only when the appellant inquired about the same, he realized that the matter was pending. Accordingly, the appeal was filed with the fresh presentation form and all this process has resulted in delay in institution of this appeal.

7. Mr.Kumbhat, the learned counsel for the respondent points out that in terms of the C.P.C. as amended and in terms of Rule 12 of Chapter IV of the Bombay High Court, Appellate Side Rules, there is no requirement of filing a copy of decree along with a Memo of Appeal. He submits therefore, the statements made by the clerk are false. Mr.Kumbhat submits that the affidavit itself quite clearly shows that the appellant was negligent while pursuing the matter. In this regard he points out that, even after the clerk allegedly informed the appellant that the decree is necessary, the appellants, took no serious steps to obtain the decree. Further, even

after the decree was ready on 15-03-2014 the decree copy, was forwarded to the solicitor only on 25-09-2014. He submits that all this does not constitute any sufficient cause and the delay ought not to be condoned on the basis of the such statements made by the clerk of the solicitor.

8. As noted earlier, in the Civil Application which was originally filed, then was hardly any explanation for the delay. The delay was stated to be of 27 days. Possibly this is the reason why no much explanation was set out in the Civil Application. The Civil Application was thereafter corrected to indicate that there is delay of 1 year and 45 days. Such correction, to a certain extent, corroborates with what is set out by the clerk of the solicitor in the additional affidavit. From the sequence of events it does appear that at least the appeal papers were ready earlier but, for some reason, the same were not lodged in the Registry. There does appear some confusion on whether the decree is required to accompany the Memo of Appeal. Mr.Kumbhat is however right in his submission that, the Registry would at least make an endorsement and thereafter, return the appeal papers. From the reading of the affidavit of the clerk of the solicitors of the appellant, it does appear that there was some bungling in the matter. The appellants have also not explained properly the steps which they may have taken in order to obtain the copy of the decree with dispatch.

9. Upon cumulative consideration of the averments in the affidavit and the documents accompanying the same, it does appear that there is some negligence on the part of the appellants or in any

case, on the part of the clerk of the solicitors of the appellants. This is also not a case where the entire blame can be put only upon the clerk of the solicitors, in order to avail the defense that, the appellants ought not be prejudiced for the fault of their solicitor's clerks. The appellants have also not acted with the diligence which was expected from them. However, it is noted that in several cases where condonation of delay is applied for, there may be some element of negligence on the part of the party seeking the condonation. That by itself, is not conclusive in determining whether the delay should be condoned or not. The element of negligence can always be taken into consideration in determining the amount of cost subject to which the delay can be condoned. In this case, though it appears that there was some bungling, the material on record also indicates that the appeal papers were prepared, though, with initial delay of less than a month. Thereafter, the matter remained to be filed on account of alleged issues of decree not accompanying the Memo of Appeal. The clerk has also stated that he was on leave, there was pressure of work and the matter had escaped his immediate attention. Taking into consideration all these factors, the delay, can be condoned however, the same shall be subject to payment of cost, which in the facts and circumstances of the present case, are computed at Rs.50,000/-.

10. The explanation in the present case, though, not entirely, satisfactory, cannot be styled as malafide or dishonest. The falsity, pointed out by Mr.Kumbhat, is more in the nature of inaccuracy. The material on record does indicate that there was negligence, to some extent, on the part of the appellant and to some extent, on the part of the clerk of the solicitors. However, it is not

such a degree as to deny the appellants a hearing of the appeals on merit. Rather, this is a case where the delay can be condoned subject however, to payment of costs of Rs.50,000/- to the respondents.

11. Accordingly, the Civil Application is allowed, the delay in institution of the appeal is condoned. Such condonation shall however be subject to costs of Rs.50,000/- payable to the respondents within a period of three weeks from today. The cost may be either directly paid to the respondents by means of Demand Draft or deposited in this Court within a period of three weeks from today. If the costs are deposited in this Court, the respondent shall be at liberty to withdraw the same unconditionally. In case of default in the payment of costs, the Civil Application shall be deemed to have been dismissed without any further reference to this Court.

12. Place the matter for admission after four weeks in case, the amount of costs are paid or deposited as aforesaid.

(M. S. SONAK, J.)