

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

**CIVIL APPLICATION NO. 2989 OF 2017
IN
FIRST APPEAL (ST.) NO. 21843 OF 2017
WITH
CIVIL APPLICATION NO. 2990 OF 2017
WITH
FIRST APPEAL (ST.) NO. 21843 OF 2017**

Smt.Sudha Deepak
(through her POA Mr.Deepak Edakayat) ...Applicant
Versus
Smt.Pratibha Shashikant Raut & Ors. ...Respondents

.....
Mr.Pramod G.Kathane for the Applicant.
Mr.Ivor Peter D'cruz for Respondent Nos. 1 and 2.
.....

**CORAM: MRS.MRIDULA BHATKAR, J.
DATED: SEPTEMBER 26, 2017**

P.C. :

1. Upon urgent mentioning, taken on Production Board.

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2. This Application is moved for condonation of delay of 162 days in filing the Appeal.

3. Learned counsel for the applicant submits that one important document was not produced before the trial Court and the applicant is in need of the document to produce in the appeal and that document was to be procured from the Chartered Accountant. It took time for

preparing the appeal and taking legal assistance and hence, delay is occurred.

4. Learned counsel for the respondents opposed this application.

5. In view of the submissions and the reasons mentioned in the application, delay is condoned. Civil Application is allowed and disposed of accordingly

6. Place the Appeal for admission on 21.11.2017.

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7. Learned counsel for the applicant submits that the respondents/plaintiffs have filed a Suit for specific performance against the applicant, who is original defendant. The said Suit was decreed on 03.12.2016 and the trial Court directed defendant no.1 to deliver possession of the suit flat to the plaintiffs within three months. He further submits that till today, the possession of the suit flat is with the applicant. He further submits that the appeal is filed by the applicant. He further submits that the possession of the suit flat is with the applicant prior to the filing of the Suit and therefore, he seeks stay to the operation and execution of the impugned judgment and order dated 03.12.2016 passed by learned Judge, City Civil Court, Mumbai.

8. Learned counsel for the respondents opposed the application. He submits that the Court Receiver be appointed in this case because the applicant is likely to create third party interest. He is opposing the application for stay because the applicant has not paid the arrears of the society maintenance and there are dues of Rs. 4 to 5 lakhs.

9. In view of the above submissions and this being a Suit for specific performance and the applicant is in possession of the suit flat prior to the filing of the Suit, the impugned judgment and order dated 03.12.2016 passed by the learned Judge, City Civil Court, Mumbai is stayed on a condition that the applicant shall not create any third party interest and shall not part with possession so also the applicant shall deposit 50% of the arrears amount towards society maintenance within a period of four weeks.

10. Stand over to 21.11.2017

(MRIDULA BHATKAR, J.)