

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

**CIVIL APPLICATION NO. 1282 OF 2016
IN
CIVIL APPLICATION NO. 238 OF 2016
IN
APPEAL FROM ORDER (ST) NO. 3705 OF 2016**

Ashish Building No.37 Co-Operative
Housing Society Ltd. Through Secretary ... Applicant
V/s.
M.P. Patravali, Prop. M/s. Patravali
Engineers & Contractors ... Respondent

Mr. P.G. Savant i/b Mr. J.S. Hegde for the Applicant.
Ms. Sampada V. Mahadik for the Respondent.

**CORAM : M.S. SONAK, J.
DATE : 17th MARCH, 2017.**

P.C. :

1 Heard learned counsel for the parties.

2 There is delay of 80 days in filing the Appeal. The explanation offered is not sufficient to condone the delay unconditionally. The applicant should have been more diligent in the matter.

3 Ms. Mahadik, learned counsel for the respondent, points out that the suit, in which the impugned order was made, was instituted in the year 2003. For almost 14 years, the applicant did not contest the Suit but applied for setting aside the *ex-parte* decree, once the same was made. Even this Appeal was not pursued

with diligence. The appeal has been moved only after execution was taken out.

4 Taking such aspects into consideration, the delay is condoned, but subject to payment of costs of Rs.10,000/- to the respondent. The costs to be deposited in this court within a period of two weeks from today. Upon deposit, the respondent shall be at liberty to withdraw the same unconditionally. In case of default, the Civil Application shall be deemed to have been dismissed without any further reference to the Court.

5 There shall be an ad-interim relief restraining the execution of impugned decree dated 02.08.2014, subject to the appellant depositing in the Trial Court, the entire decretal amount together with costs and interest within a period of four weeks from today. In case, there is default in the matter of deposit, the ad-interim order shall stand vacated without any further reference to the Court.

6 If the amount of costs is deposited within two weeks, then place the matter for admission on 26.04.2017 on the supplementary board.

(M.S. SONAK, J.)