

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION st. NO.31532 OF 2017
IN
CIVIL APPLICATION NO.818 OF 2017
IN
APPEAL FROM ORDER NO.645 OF 2017

Ashwin Kumar Lulla & anr. ... Applicants

IN THE MATTER OF:

Wallace Flour Mill Company Pvt. Ltd. ... Appellant

Vs.

Ashwin Kumar Lulla & Ors. ... Respondents

Mr.A.R. Mishra for Applicants
Mr.Shardul Singh with Preet Chheda i/b DSK Legal for Appellant in
A.O.
Mrs.Madhuri More for Resp. No.3 / Corporation

CORAM: MRS.MRIDULA BHATKAR, J.

DATE: NOVEMBER 13, 2017

P.C.:

1. This application is filed by the learned Counsel for respondent Nos.1 and 2 i.e., the original plaintiff Nos.1 and 2, before the Court. The prayer is that the order condoning the delay of 220 days passed by this Court on 15.9.2017 be recalled.

2. It is contended by the learned Counsel appearing for the applicants that the appellant has made false statement before this

Court in respect of service of the Civil Application. The learned Counsel for the applicants has submitted that no notice about the hearing the application for condonation of delay was served on the applicants before 15.9.2017, when this Court passed the order. He relied on the correspondence between the parties i.e., the letter dated 21.9.2017 written by the learned Counsel for the Appellant to the respondents, thereby again serving the notice on the respondents in respect of the hearing of the appeal. The said letter was replied by the party-respondents by letter dated 22.9.2017. The learned Counsel for the applicants has pointed out that the submission that respondent Nos.1 and 2 have refused to accept service on 14.8.2017 and 11.9.2017, is false. The learned Counsel has submitted that the notice of application for the condonation of delay was never served on the respondent Nos.1 and 2 i.e., the applicants herein, as they were busy in attending to their mother who was hospitalised and were also busy in performing the rituals of their maternal aunt, who had expired on 2.9.2017. He further submitted that a wrong statement was made by the learned Counsel for the appellant that the trial Court passed a separate order. The trial Court did not pass order of delay. The trial Court directed the order in the open Court in the presence of both the parties in the Court.

Therefore, there was no question of applying for certified copy and waiting for making application for certified copy. Thus, he submits that under such circumstances, the order passed by this Court condoning the delay is to be recalled.

3. Learned Counsel for the appellant produced the photocopy of Vichare Courier and Logistics Pvt. Ltd. showing the service made by them on 13.9.2017 and also a Daily Runsheet and also produced a Track report. The said Daily Runsheet is taken on record and marked 'exhibit 1' and the Track Report is marked 'exhibit 2'. The learned Counsel submitted that if both these reports are compared, it appears that on 12.9.2017 when it was served, the courier boy went and tried to serve them, but the room was closed down. However, on 13.9.2107, again, at 12.15, when the courier boy went, the document through the courier boy, was not accepted. Accordingly, the same endorsement was made on the daily runsheet, which is marked exhibit 1.

4. On perusal and verification of the facts, which are appearing on the track report and the courier runsheet, I am convinced that the statement made by the learned Counsel for the appellant that respondent Nos.1 and 2 refused to accept the service, was correct

and not false. This Court has already condoned the delay by order dated 15.9.2017. Under such circumstances, I need not go again into the merits of that application.

5. Civil Application is, therefore, dismissed. I note that the respondents by making such application, have unnecessarily taken time of this Court. Hence, the respondents are saddled with costs of Rs.1,000/- to be deposited with the Maharashtra State Legal Services Authority, within a week from today.

(MRIDULA BHATKAR, J.)