

Vidya Amin

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION (St.) No. 32663 OF 2017
IN
FIRST APPEAL (ST.) No. 32662 OF 2017

Gaurav Nalinikant Bhadreshwara ... Applicant
Vs.
Natwar Manilal Doshi & Ors. ... Respondents

Mr. Piyush M. Shah a/w. Dishang Shah, Ms. Meetal Savla , Advocate
for the applicant.
Ms. S.A. Dhamale, Advocate for respondent nos. 1 to 3.

CORAM: MRS.MRIDULA BHATKAR, J.
DATE: 12th December, 2017.

P.C.:

This Application for condonation of delay is moved by the appellant, who is the original defendant no. 1 against whom the decree of possession is passed on 16th September, 2016. The plaintiff has filed the suit for possession of Flat No.1105 situated on 11th floor in one building known as "Siddhi Heights" at Charkop.

2. The learned counsel for the appellant/applicant has submitted that the applicant/defendant no. 1 has filed the written statement on 22nd May, 2008 but thereafter the earlier counsel did not inform the appellant about further dates. The learned counsel submitted that though the appellant contacted his previous Advocate Mr. Kothari

telephonically, the counsel did not take care of the matter. The matter was initially in the High Court and then it was transferred to City Court. However, his advocate did not inform about the transfer of the Suit and did not appear before the trial Court. The learned counsel has further submitted that after judgment dated 16th September, 2016, the appellant lost the possession on 27th November, 2017 after filing the First Appeal. He submitted that at that time, the appellant had knowledge of ex-parte decree when the appellant was compelled to vacate the flat. Hence, there is no delay in filing the First Appeal.

3. The learned counsel for the respondent opposed this Application and submitted that the appellant was represented by the advocate before the trial Court and the written statement was also filed. The learned counsel relies on the affidavit-in-reply and submitted that notice in execution proceedings was served on the appellant, however, the appellant refused to accept the same. The bailiff report to that effect is filed before the Executing Court and therefore, the decree of possession was implemented in the month of November 2017 by the defendant. She submitted that as on today, the respondents/plaintiffs are in possession of the suit flat and no

satisfactory explanation is given and therefore, the delay is not to be condoned.

4. Heard the submissions. Considered the reasons mentioned in the Application so also the affidavit-in-reply filed by the respondents. The suit is of 2008. The written statement was filed on 2nd May, 2008. It shows that the appellant wanted to contest the suit. The suit was transferred from High Court to City Civil Court and interregnum it appears that there is no communication between the appellant and his counsel.

5. The learned counsel has made some allegations against the counsel who appears for the appellant before the trial Court, however, no written communication between the counsel and the client is produced on record to accept such allegations conclusively. However, this is the First Appeal and appellants have filed written statement in the suit and therefore, I am of the view that in all fairness, the delay of one year and three months is hereby condoned on a condition that the appellant to pay costs of Rs.5,000/- to the respondents.

6. Civil Application is allowed and is disposed of accordingly.
7. Appeal be numbered.
8. Place the First Appeal for admission and for hearing of the Application for restoration on 6th February, 2018. The respondents not to part with the suit flat till admission of the Appeal.

(MRIDULA BHATKAR, J.)