

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

**APPEAL FROM ORDER (ST) NO.34305 OF 2016
WITH
CIVIL APPLICATION (ST) NO.34307 OF 2016
IN
APPEAL FROM ORDER (ST) NO.34305 OF 2016**

Viiking Ventures Private Limited ..Appellant

V/s.

Mr.Avnish Chhabria of Mumbai ..Respondent

Ms.Aarti S. Suvarna for the Appellant.

Mr.Jehangir Jejeebhoy i/by Arun Panichkar for the Respondent.

CORAM : M. S. SONAK, J.

DATE : 05 JANUARY 2017.

P.C.

1. Heard Ms.Aarti Suvarna for the appellant.
Mr.Jehangir Jeejeebhoy for the respondent.

2. The learned counsel for the respondent raised the preliminary objection of the maintainability of this appeal on the ground that the order appealed against is neither one of the orders referred to Section 104 of the C.P.C. nor is the order referred to in Order 43 Rule 1 of the C.P.C.

3. Ms.Arta Suvarna learned counsel for the appellant submits that since this is an order made by the City Civil Court,

an appeal will lie against the same to this Court.

4. The order impugned, has declined to condoned delay of about 161 days in filing application seeking leave to defend. The Notice of Motion seeking condonation of delay has been dismissed by the Trial Court.

5. Such an order is not relatable to any of the orders listed in Section 104 of C.P.C. or Order 43 Rule 1 of C.P.C. Therefore, against an order of this nature, an appeal from order will not be maintainable. The preliminary objection is therefore liable to be upheld and the same is hereby upheld.

6. This appeal is accordingly, dismissed as not maintainable. However, this shall not preclude the appellant from taking up appropriate proceedings for questioning the impugned order in accordance with law.

(M. S. SONAK, J.)