

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO. 336 OF 2014
IN
FIRST APPEAL NO. 253 OF 2009

M/s. Aarti Company & Anr. ..Applicants / Appellants
vs.
Vikrant S. Mathpati & Anr. ..Respondents

Ms I. Koparkar with M. Sarangi for Applicants / Appellants.
Mr. A. B. Tajane for Respondent Nos. 1 and 2.

CORAM : M. S. SONAK, J.
DATE : 06 MARCH 2017

P.C :

- 1] Heard learned counsel for the parties.
- 2] The appeal was dismissed on 16 December 2009 for non prosecution. By this civil application, restoration is applied for. There is delay of about 3 years and 337 days in applying for restoration. Accordingly, condonation of delay has also been applied for.
- 3] The reason stated in the civil application is that there was a confusion in the mind of the applicants with regard to transfer of the matter from this court to the district court consequent upon amendments to the provisions relating to pecuniary jurisdiction. He stated that the matter was entrusted to the Advocate and it was expected that the Advocate would take necessary steps in the matter. It is stated that the applicant entirely relied upon his

Advocate and it is only after the applicant came to know that the matter had been dismissed for default and no steps had been taken in the matter, that restoration was applied for. On all these grounds, it is submitted that sufficient cause has been shown for condoning the delay and for restoration of the first appeal.

4] Mr. Tajane, learned counsel for the respondents submit that the matter has come up on board on several occasions. He submits that initially application for restoration was made for the same purpose, however, the same was withdrawn unconditionally as recorded in the order dated 19 December 2014. He submits that there is no cause, much less sufficient cause indicated in the civil application. For these reasons, Mr. Tajane submits that the delay ought not to have been condoned and the application for restoration is required to be dismissed.

5] In this case, the applicant, claims to be a chartered accountant. The suit was for recovery of money. The finding recorded in the impugned judgment and decree is that the applicant was in the business of money lending. No doubt, this finding has been challenged in the appeal. However, such an applicant, cannot lay the entire blame upon his Advocate and on the said basis, seek condonation of delay and restoration. The applicant, is also expected to be diligent in the matter of this nature and to make timely inquiries as regards to the prosecution of the

appeal. The delay in the present case is quite substantial.

6] The applicants / appellants has however stated that they are based in Solapur. The appeal was pending at Mumbai. It is possible that the applicants / appellants, were under the impression that the appeal is still pending or that they will receive necessary intimation upon its transfer to the district court at Solapur. It is possible that all this must have led to not attending the matter with the required level of diligence.

7] Taking into consideration the aforesaid aspects, this is a case where delay can be condoned and appeal can be restored subject to the appellants paying costs in as much as the respondents, are in no manner responsible for what is set out in the civil application. The respondents, are required to be compensated in a matter of this nature.

8] The civil application is therefore allowed. The delay is condoned and the appeal is ordered to be restored subject to the applicants / appellants paying costs of Rs.30,000/- (Rupees Thirty Thousand) within a period of four weeks from today. In case amount of costs is deposited in this court within a period of four weeks from today, the delay shall stand condoned and the appeal shall stand restored. Upon restoration, the Registry to transmit the papers in the said appeal to the concerned district court as the valuation in the appeal is less than Rupees One Crore. However, if

the amount of costs are not paid within a period of four weeks from today, then, this civil application shall stand dismissed without any further reference to this court.

9] If the costs are deposited, the respondents shall be at liberty to withdraw the same in equal measure, without any conditions.

10] Learned counsel for the applicants / appellants states that the amount of costs is quite excessive. In this case, the matter has come on the board on several times. Respondent no. 1 was required to file a detailed affidavit in reply opposing not only this civil application but also the earlier civil application, which was withdrawn.

11] The delay is also quite substantial. The applicant is a chartered accountant and it is not as if he cannot bear the quantum of costs. In fact, Mr. Tajane was submitting that this is not at all a fit case for condonation of delay and in case delay is to be condoned the costs should be minimum Rs.50,000/-. In such circumstances, it cannot be said that the amount of costs are excessive.

12] The civil application is disposed of accordingly.

13] All concerned to act on basis of the authenticated copy of this order.

(M. S. SONAK, J.)