

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
APPEAL (L) NO. 137 OF 2017
WITH
NOTICE OF MOTION (L) No.896 of 2017**

**Ulhas Kamlakar Gawande
Vs.
Rajan Gopinath Khot & Ors**

**..Appellant

..Respondents**

**Mr. Jignesh Shah for the Appellant
Mr. Rajeev Matkar for the Respondents**

**CORAM :R. M. SAVANT, &
SARANG V KOTWAL, JJ
DATE : 16th NOVEMBER, 2017**

P.C.

1 Admit. Heard forthwith.

2 The above Appeal takes exception to the order dated 8-3-2017 passed by a Learned Single Judge of this Court K. R. Shriram J., by which order, the Notice of Motion No.23 of 2015 came to be allowed and made absolute in terms of prayer clauses (a) and (b), resultantly the above Misc Petition (L) No.101 of 2007, came to be restored to file.

3 It is not necessary to burden this order with unnecessary details. Suffice it would be to state that the said Misc Notice came to be dismissed for non prosecution on account of the non removal of the office objections under Rule 986 of the Original Side Rules by the Learned Prothonotary and Senior Master, of this Court. The Respondent Nos.1 and 2 filed the instant Notice of Motion being 23 of 2015 for restoration of the said Misc Petition and for

condonation of delay of 2109 days in filing the Notice of Motion. The reasons for the delay are appearing in paragraphs 4, 5 and 6 of the Affidavit in Support of the Notice of Motion. The Learned Single Judge has allowed the said Notice of Motion on the ground that the justification or the grounds mentioned in paragraphs 4, 5 and 6 have not been replied parawise by the original Petitioners, meaning thereby that the said justification or grounds have gone uncontroverted. A reading of the impugned order makes it clear that the impugned order is founded on the said premise.

4 The Learned Counsel appearing on behalf of the Appellant Mr. Shah would contend that the recording made in paragraph 1 of the impugned order that to the grounds mentioned in paragraphs 4, 5 and 6, there is no parawise reply in the affidavit in reply, is erroneous. The Learned Counsel sought to draw this Courts attention to the said Affidavit in Reply dealing with the grounds mentioned in paragraphs 4, 5 and 6. It was also the submission of the Learned Counsel that the impugned order is sans any reasons which is a sine-qua-non whilst dealing with an application for condonation of delay.

5 Upon this the Learned Counsel appearing for the Applicants i.e. the Respondent Nos.1 and 2 herein fairly conceded that in fact the said grounds appearing in paragraphs 4, 5 and 6 have been dealt in the affidavit in reply.

6 In our view, in the light of the undisputed fact that the grounds mentioned in paragraphs 4, 5 and 6 have in fact been dealt with in the Affidavit in Reply, the foundation of the impugned order, therefore, does not exist. We therefore deem it appropriate to set aside the impugned order dated 8-3-2017 and relegate the Notice of Motion back to the Learned Single Judge for a denovo consideration. In terms of the law which is applicable, the order either condoning the delay or rejecting the application would have to contain the reasons for such acceptance or rejection. Needless to state that all the contentions of the parties are kept open for being urged before the Learned Single Judge. The Appeal is accordingly allowed and disposed of.

7 In view of the disposal of the above Appeal, the Notice of Motion(L) No.896 of 2017 does not survive and to stand disposed of as such.

8 Though pursuant to the impugned order the objections have been removed and the Misc Petition has been numbered, the hearing of the same would now be contingent upon the decision that would be rendered in the Notice of Motion on its denovo consideration.

[SARANG V KOTWAL, J]

[R.M.SAVANT, J]