

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
NOTICE OF MOTION NO.1517 OF 2017
IN
APPEAL (L) NO.347 OF 2017**

Axis Bank Limited	..Applicant
V/s.	
Padma Bhatt & Ors.	..Respondents.

**WITH
NOTICE OF MOTION NO.1516 OF 2017
IN
APPEAL (L) NO.348 OF 2017**

Axis Bank Limited	..Applicant
V/s.	
Madhav Prasad Agrawal & Ors.	..Respondents.

**WITH
NOTICE OF MOTION NO.1518 OF 2017
IN
APPEAL (L) NO.346 OF 2017**

Axis Bank Limited	..Applicant
V/s.	
Manisha Saraf & Anr	..Respondents.

Mr.V.V.Tulzapurkar, Senior Advocate with Mr.Karl Tamboly, Mr.B.R.Palay, Ms.Shreya Jha i/b. Cyril Amarchand Mangaldas for the Appellant in Appeal (L) No.347 of 2017 and for the Applicant in NMA No.1517 of 2017

Mr.Rafiq Dada, Senior Advocate with Mr.Karl Tamboly, Mr.B.R.Palay, Ms.Shreya Jha i/b. Cyril Amarchand Mangaldas for the Appellant in Appeal (L) No.348 of 2017 and for the Applicant in NMA No.1516 of 2017

Mr.PK.Dhakephlakar, Senior Advocate with Mr.Karl Tamboly, Mr. B. R. Palav, Ms.Shreya Jha i/b. Cyril Amarchand Mangaldas for the Appellant in Appeal (L) No.346 of 2017 and for the Applicant in NMA No.1518 of 2017

Mr.S.N.Vaishnawa a/w Ms Nupur Mukherjee, Mr. Kunal Vaishnawa i/b. M/s.N.N.Vaishnawa & Co. for Respondent No.1 in Appeal (L) No.347/17, Respondent Nos.1& 2 in Appeal (L) No.348/17 and Respondent No.1 in

Appeal (L) No.346/17 and for the Respondent No.1 in NMA No.1517 of 2017.

Ms.Ankita Singhania with Mr.Adhish Sharma i/b. Khaitan & Khaitan for Respondent No.14 in NMA No.1517 of 2017

**CORAM :R. M. SAVANT, &
SARANG V KOTWAL, JJ
DATE : 5th DECEMBER, 2017**

P.C.

1 The above Notices of Motion have been filed by the Applicant / Appellant i.e. the Axis Bank Ltd., seeking condonation of delay of 151 days in filing the above Appeals. The Appeals have been filed challenging the order dated 3-3-2017 passed by a Learned Single Judge of this Court S. J. Kathawalla J., by which order the status-quo in respect of the property in question i.e. the building which was being constructed by the Defendant No.1 Orbit Corporation Ltd., have been granted.

2 The reasons for the delay which has occasioned have been mentioned in the Affidavits in Support of the above Notices of Motion. The said Affidavits are identical. The delay is sought to be explained on the basis of the averments made in the said Affidavits in Support especially in paragraph (7) thereof as also by way of the averments made in the additional affidavit. The sum and substance of the reasons stated is that the Applicant/Appellant after the said order dated 3-3-2017 came to be passed by the Learned Single

Judge had to take various steps in view of the subsequent orders passed in the said Suit. The said orders revolve around protection of the property in question i.e. the building, pending the Suit. It is also mentioned that the Applicant / Appellant had taken symbolic possession of the suit building on 7-11-2016 under Section 13(4) of the SARFESI Act, which is prior to the filing of the Appeal.

3 The reasons mentioned in the Affidavits in Support in explaining the said delay have been dealt with on behalf of the original Plaintiff / Plaintiffs by filing their Affidavits in Reply in each of the Notices of Motion. By the reply Affidavits, the original Plaintiff / Plaintiffs i.e. the Respondent to the Appeals question the reasons mentioned by the Applicant/Appellant. It is sought to be contended on behalf of the original Plaintiff that it is only after the application filed by the Applicant / Appellant invoking Order VII Rule 11 for rejection of the plaints, came to be dismissed by the Learned Single Judge, that the Applicant / Appellant found need to challenge the said order dated 3-3-2017. It is also sought to be contended in the said Affidavits in Reply that it is the Plaintiffs who in fact are protecting the property by taking various measures.

4 Heard the Learned Counsel for the parties.

5 The Learned Senior Counsel Mr. Rafiq Dada, Mr. Tulzapurkar and Mr. P. K. Dhakephalkar would seek to make submissions in support of the Notices of Motion seeking condonation of delay. The said submissions were revolving around the averments which have been made in the Affidavits in Support of the Notices of Motion. The Learned Senior Counsel would contend that having regard to the fact that the Applicant / Appellant is a Corporate Body and since the officers of the Applicant / Appellant were involved in various steps which were required to be taken pursuant to the orders which were passed subsequent to the order under challenge in the Appeals i.e. order dated 3-3-2017, some time was lost in the same and therefore has resulted in three Appeals being filed belatedly by 151 days. The Learned Senior Counsel would contend that since the Applicant / Appellant have a serious grievance as regards the order dated 3-3-2017, great prejudice would be caused to the Applicant / Appellant if they are not allowed to prosecute the Appeals on merits and they are thrown out on technicalities.

6 Per contra, Mr. Vaishnawa the Learned Counsel appearing for the Respondent would make submissions questioning the case made out by the Applicant /Appellant in the Notices of Motion. The Learned Counsel would contend that the orders in question have virtually been passed by the consent of the parties and also have been circulated by emails. The Learned Counsel would reiterate that it is the Plaintiffs in various suits who are protecting the

property in question and that the Applicant / Appellant is unnecessarily making a bogey of the same whilst seeking condonation of delay. The Learned Counsel also sought to make submissions as regards the merits of the case of the Applicant / Appellant in the Appeals. The Learned Counsel would lastly contend that the reasons set out in the Affidavits in Support do not constitute sufficient cause so as to entitle the Applicant / Appellant for condonation of delay of 151 days.

7 The Learned Counsel Mrs. Ankita Singhania would support the submissions made by the Learned Counsel Mr. Vaishnawa.

8 Having heard the learned Counsel for the parties, We have considered the rival contentions. The question that is posed is whether exercise of discretion in favour of the Applicant / Appellant is warranted in the facts and circumstances of the present case. As indicated above it is the order dated 3-3-2017 passed by the Learned Single Judge which is taken exception to by way of the Appeals which are filed on behalf of the Applicant / Appellant. As indicated above there is a delay of 151 days in filing the above Appeals. The said delay as can be seen has been sought to be explained by the averments contained in the Affidavits in Support and especially in paragraph (7) (i) onwards of the said Affidavits. It is required to be borne in mind that the Applicant / Appellant is a Corporate body and it is the case of the

Applicant/ Appellant that after the order dated 3-3-2017 came to be passed, the Applicant / Appellant was involved in taking various steps as a result of the orders which were passed subsequent to the order dated 3-3-2017. Though on behalf of the original Plaintiff i.e. the Respondent herein contentions were sought to be raised as regards the merits of the challenge to the said order dated 3-3-2017 on the grounds which we have adverted in the earlier part of this order. It is not necessary to go into the said aspects as the said aspects can be considered as and when the Appeals are taken up for admission. The other reasons mentioned in the Affidavits in Support and which have been urged by the Learned Senior Counsel appearing for the Applicant/Appellant can be said to be the plausible reasons for the delay having occasioned in filing the Appeals. It is well settled that no litigant benefits by the delay being caused in filing the proceedings, in the instant case the delay has occasioned in view of the fact that the officers of the Applicant/ Appellant were involved in various measures which were required to be taken which are mentioned in the Affidavits in Support of the Notices of Motion. The Applicant / Appellant is therefore required to be given an opportunity to prosecute the above Appeals on merits rather than being thrown out on technicalities. For the delay that is caused the Applicant / Appellant can be put to terms. In our view therefore case for exercise of discretion in favour of the Applicant/Appellant is made out. The Notices of Motion are therefore required to be allowed and are accordingly allowed and made absolute in

terms of prayer clause (a). In the facts and circumstances of the case the Applicant / Appellant to pay costs of Rs.10,000/- in each of the above Notices of Motion. The Learned Counsel for the Plaintiff / Plaintiffs are agreeable that the costs may be paid over to the Maharashtra Legal Aid Fund, the same therefore to be done within 2 weeks from date. The costs quantified are therefore in the sum of Rs.30,000/- in total. List the Appeals for admission after the ensuing Christmas Vacation in the second week of January 2018.

8 The Notices of Motion are accordingly disposed of.

[SARANG V KOTWAL, J]

[R.M.SAVANT, J]