

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

**CIVIL APPLICATION (ST.) NO. 19827 OF 2018
IN
FIRST APPEAL (ST.) NO. 19824 OF 2018**

Bharat Insulation Co. (India) Ltd.
(formerly Jyoti Wire Industries Ltd.) ... Applicant/Appellant
V/s.
Canara Bank & Anr. ... Respondents

Mr. Gourang Mehta a/w Mr. Sachin Kudalkar i/b M/s. Madekar & Co. for the
Applicant/Appellant.
Mr. B.G. Saraf for Respondent No.2.

**CORAM : K.K. SONAWANE, J.
DATE : 9th AUGUST, 2018.**

P.C. :

1 Heard the learned Counsel for the applicant. He undertakes to
remove office objection within a period of one week.

2 The learned Counsel for the applicant submits that the applicant
preferred a Suit No.7760 of 1996 for the declaration and injunction against
the Respondents. Learned Trial Court after appreciating the evidence on
record found reluctant to nod in favour of applicant-original plaintiff and
dismissed the suit. Being dis-satisfied with the findings of the learned Trial
Court for dismissal of the suit, the applicant is intending to prefer an appeal
to redress its grievance. But, there is a delay of 36 days for presenting an
appeal.

3 According to learned Counsel for the applicant, delay caused in

presenting appeal is not intentional and deliberate but due to unavoidable circumstances. The matter pertains to the recovery of amount. In such circumstances, it is essential to condone the delay.

4 The learned Counsel for Respondent No.2 raised the objection and submit that the delay has not been properly explained and, therefore, same may not be condoned.

5 Learned Counsel for the applicant produced the affidavit with acknowledgment of service of notice to Respondent No.1-Canara Bank. It is taken on record and marked 'X' for identification. In the notice served to Respondent No.1-Canara Bank, it has specifically mentioned that the present matter is listed today before this Court for hearing and authority of the Canara Bank was asked to appear in the proceeding. Despite the service of notice privately to Respondent No.1-Canara Bank, no one else appeared on its behalf. In view of nature of the subject matter, there is no impediment to proceed further for hearing of the present application in absence of Respondent No.1.

6 Having considered the nature of subject matter and the argument advanced on behalf of both Applicant as well as Respondent No.2, I do not find any impediment to afford reasonable opportunity to the applicant to approach to the appellate forum to ventilate his grievances for redressal against the findings expressed by the learned Trial Court

dismissing the suit. In case the delay is condoned, it would not cause any injustice and prejudice to the Respondents. In contrast, it would sub-serve the purpose in the interest of justice. Moreover, there is meager delay of 36 days therefore, same is required to be condoned.

7 Accordingly, the application stands allowed in terms of prayer clause (a). Delay caused for presenting an appeal against the impugned judgment and decree passed by the learned City Civil Court at Bombay in L.C. Suit No.7760 of 1996, is hereby condoned. The Registry to take requisite steps for further process.

8 On registration of Appeal, issue notice of admission to the Respondents, returnable on 11.09.2018. Learned Counsel Mr. Saraf waives service of notice for Respondent No.2. In addition to the regular mode of service, appellant to serve the notice to Respondent No.1-Canara Bank privately by legally accepted fastest mode and file affidavit of service with its tangible proof. Meanwhile, call the record and proceeding from the concerned Trial Court.

9 In case applicant failed to remove office objection as referred above within a week, the present order for condonation of delay stands vacated automatically without further reference to this Court. Civil Application for delay condonation be treated as rejected.

(K.K. SONAWANE, J.)