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

**CIVIL APPLICATION NO. 1072 OF 2018
IN
SECOND APPEAL (STAMP) NO. 23427 OF 2018**

Khopoli Nagarpalika Parishad, Khopoli .. Applicant

In the matter between

Khopoli Nagarpalika Parishad, Khopoli .. Appellant

Vs.

Smt. Jaitunbi A. Gafoor Patel & Ors. .. Respondents

Mr. Rajesh S. Datar for the Applicant-Appellant.

Mr. Roshan S. Tanna for the Respondents.

CORAM : K. K. SONAWANE, J.
DATE : 15th OCTOBER, 2018.

P. C. :

1. Heard learned Counsel for the Applicant-Civic Authority, Khopoli and learned Counsel for the Respondents. The Applicant-Municipal Council moved the present Application seeking condonation of delay of 252 days in filing the Second Appeal agitating the error of legal issues in the impugned Judgment and Order passed by the learned Principal District Judge, Raigad-Alibag in Regular Civil Appeal No. 199 of 1993.

2. The learned Counsel for the Applicant submits that there was Regular Civil Suit No. 24 of 1985 filed on behalf of Civic Authority, Khopoli for specific performance of contract against the Respondents. The learned Trial Court after appreciating evidence on record, decreed the suit

and directed the Respondents to execute the sale deed in favour of the Applicant-original Plaintiff-Khopoli Municipal Council, Khopoli as per terms of Agreement dated 28.05.1980. It was also directed to deliver the possession of the contentious suit property in favour of Plaintiff. Being dissatisfied with the impugned decree passed by the learned Trial Court, the Defendants/Respondents preferred the Civil Appeal No. 199 of 1993. The learned Counsel for the Applicant referred the events occurred pending the Appeal, before the District Court in regard to dismissal of the proceeding for want of prosecution and later on same came to be restored for hearing on merits, etc. Eventually, the Appeal was heard and adjudicated on merits. The Appeal was partly allowed. The learned District Judge quashed and set aside the operative part of the impugned order in regard to delivery of possession of the property in favour of original Plaintiff-Civic Authority. However, the order of District Court is silent in regard to rest of the operative part of Trial Court's decree under Appeal. The Applicant-Civic Authority did not agree with the Judgment and Order passed by the District Court in the Appeal and intending to prefer a Second Appeal to redress its grievances but there was delay of 252 days in filing the Appeal.

3. According to the learned Counsel for the Applicant-Civic Authority, the delay was not intentional and deliberate one but caused due to compliance of official process. The matter pertains to specific performance of contract. According to the learned Counsel, there is a

legal error on the face of record in the decree passed by the First Appellate Forum in Appeal. There are substantial legal issues involved in the Appeal. In case, the delay is not condoned, it would cause injustice and hardship to the Applicant-Civic Authority.

4. The learned Counsel for the Respondents filed the Affidavit-in-Reply on record and opposed the application for condonation of delay. He submits that the First Appellate Forum has already considered all the factual aspects on record in its proper perspective. There are no legal errors in the findings of the District Judge. The delay caused for proposed Appeal on behalf of Applicant is huge one. The Applicant did not explain the delay in proper manner. The learned Counsel for the Respondents requested not to nod in favour of Applicant-Civic Authority, Khopoli.

5. Having given anxious consideration to the arguments advanced on behalf of both sides, it appears that the matter pertains to immovable property. The learned Trial Court granted decree and directed the Respondents to execute the sale deed of disputed suit property in favour of Civic Authority. The learned Trial Court observed that the entire consideration amount has already been paid to the Respondents and they were directed to execute the sale deed of the contentious suit property in favour of the Applicant. The District Judge appreciated evidence on record in Civil Appeal No. 199 of 1993 and partly allowed the Appeal. But, there were no directions about the decree of execution of sale deed, passed by

the Trial Court. The circumstances on record, prima facie, indicate some sort of legal infirmity in the order passed by the First Appellate Forum. In view of legal issues involved in the proposed Appeal, it would unjust and improper to preclude the Applicant for approaching to this Court for redressal on the technical issue of condonation of delay. Moreover, it is the settled principle of law that, while dealing with the Application for condonation of delay, the Court should adopt the liberal and pragmatic approach and avoid pedantic approach.

6. In view of reasons mentioned in the Application, I find that the delay is required to be condoned in the interest of justice otherwise it would cause injustice and hardship to the Applicant. Therefore, Application deserves to be allowed for awarding substantial justice.

7. Accordingly, the Application stands allowed in terms of prayer Clause (a). The delay caused in filing the Appeal is hereby condoned. The Registry to take requisite steps for further process.

8. On registration of Appeal, issue notice to the Respondent. Learned Counsel Shri Tanna waives service of notice on behalf of all the Respondents. Call for R & P from the concerned District Court. After necessary compliance, list the Appeal for admission in due course.

[K. K. SONAWANE, J.]