

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.4904/2016
IN
FIRST APPEAL (ST) NO.34185/2016

Pune Municipal Corporation

... Applicant

V/s.

Rajdeep Buildcon Pvt. Ltd.

... Respondent

Mr. A. Y. Sakhare, Senior Advocate i/b. Vishwanath Patil for the
Applicant

Mr. Surel S. Shah i/b. N. V. Khaladkar for the Respondent.

**CORAM: K.K. TATED &
SARANG V. KOTWAL, JJ.**

DATED : JANUARY 10, 2018

PC. :

1. Heard the learned counsel for the parties. By this Application the Applicant Defendant seeks condonation of 1031 days delay in preferring the First Appeal challenging the judgment and decree dated 22.10.2013 passed by the 7th Jt. Civil Judge, Senior Division, Pune in Special Civil Suit No. 2555/2010 holding that the Applicant Defendant to pay sum of Rs.33,17,669/- with interest @ 12% p.a. to the Respondent Plaintiff.

2. The learned senior counsel for the Applicant submits that to take a decision on behalf of the Municipal Corporation, they have to consult

several officers. He submits that in that process there was delay on their part to file the First Appeal. He submits that, immediately after the decree was passed by the Trial Court, the Respondent Plaintiff filed the Execution Application. Though they appeared before the executing court and made an Application seeking time, during that time they noticed that the Plaintiff has failed to refund a sum of Rs.1,47,00,000/- which was given to them by way of mobilization advance. At that time the Applicant decided to file the First Appeal before this court.

3. The learned senior counsel for the Applicant submits that in the present proceedings, the Respondent Plaintiff had filed the First Appeal No.447/2014 challenging the same judgment and decree dated 22.10.2013 in Special Civil Suit No.2555/2010. He submits that the appeal was admitted by this court on 23.10.2015. He submits that till today the notice is not received by the Applicant Defendant in the First Appeal No.447/2014. Hence, their right to file cross-objection still subsists. He submits that in the interest of justice this Hon'ble Court be pleased to condone the delay in filing the First Appeal. He submits that if delay is not condoned, irreparable loss will be caused to them. In support of this contention, he relies on an unreported order dated 13.09.2005 of this court in ***Civil Application No.3570/2005 in First Appeal (ST) No.18270/2005 The Municipal Corporatin of Greater Mumbai Vs. Smt. Hiraben Motilal Shah & Anr.***

4. The learned senior counsel for the Applicant submits that pursuant to the liberty granted by this court, they filed an additional affidavit dated 01.02.2017. He relies on paragraph 13 and 15 of the

said affidavit, in support of the present Civil Application, which read thus:

“13. I say that after being duly advised by its local Advocate the Applicant filed Special Civil Suit No.1277/2015 in the month of October 2016 claiming the amount of mobilization advance along with the accrued interest. I say that in the said suit the Applicant filed Application below Exhibit-17 seeking to invest the amount already deposited by the Applicant in the execution proceedings initiated by the Respondent for recovering the aforesaid decretal amount in any Nationalised Bank. I say that the said Application came to be rejected vide order dated 30.11.2015 and therefore against the said order the Applicant filed Writ Petition bearing No.2131/2016.

15. As aforesaid, till the month of February 2015 the Applicant was not aware and/or alive to the fact that amount is due and recoverable from the Respondent towards the mobilization advance. Only and only in the month of February 2015 the Applicant also became aware that the outstanding amount is far more than the amount due as per the impugned judgment decree.”

5. On the basis of this submission and the authority, the learned senior counsel for the Applicant submits that the delay in preferring the First Appeal may be condoned and the matter may be heard on merits.

6. On the other hand the learned counsel for the Respondent Plaintiff has vehemently opposed the Civil Application. The Respondent has filed their Affidavit-in-Reply as well as the additional affidavit to oppose the present Civil Application. The learned counsel for the Plaintiff submits that in the present proceedings, they filed the Execution Application for execution of the judgment and decree dated 22.10.2013 passed by the Trial Court. He submits that in that Execution Application, the Applicant Defendant appeared. He submits

that on 20.11.2014, 12.12.2014, 19.01.2015 and 23.02.2015 they made Application for extension of time to deposit the decretal amount. He submits that thereafter the Applicant made an Application below Exhibit- 15 in Special Darkhast No.100/2014 dated 04.03.2015 stating, the Defendant has decided to prefer an appeal before this court. He submits that though the Applicant had knowledge about filing of Execution Application, they failed and neglected to make an Application for certified copies of the impugned judgment and decree till 2016. He submits that the Applicant has made an Application for certified copies on 02.11.2016 and collected the same on 22.11.2016 and preferred the First Appeal in this court on 09.12.2016. He submits that the Applicant has failed and neglected to explain the delay on their part in making the Application for certified copies.

7. The learned counsel for the Respondent Plaintiff submits that the entire decretal amount is deposited by the Applicant before the executing court. When they made an Application for withdrawal of the amount, the Applicant filed Writ Petition No.2131/2016. He submits that when the matter was heard before this court (Coram : N. M. Jamdar, J.) on 27.10.2016 the Applicant made a statement that, they decided to challenge the decree passed by the Trial Court by preferring First Appeal. He submits that this itself shows that the Applicant Defendant has taken the present litigation in a very casual manner. There is no explanation in their Civil Application as well as the additional affidavit, why there was delay on their part to take decision to file First Appeal before this court. If no sufficient cause is shown, delay should not be condoned. In support of this contention,

the learned counsel for the Respondent Plaintiff relies on the judgment in the matter of ***Postmaster General and Ors. Vs. Living Media India Ltd. and Anr. 2012(3) SCC 563*** (paragraph 20 to 25).

8. The learned counsel for the Respondent also relied on and ***Amlendu Kumar Bera and Ors. Vs. State of West Bengal 2013 (4) SCC 52***. Paragraph 9 and 10 of the said judgment read thus:

“9. We have heard the learned counsel appearing for the appellant and the learned counsel appearing for the Respondent-State. There is no dispute that the expression ‘sufficient cause’ should be considered with pragmatism in justice oriented approach rather than the technical detection of ‘sufficient cause’ for the explaining every days’ delay. However, it is equally well settled that the Courts albeit liberally considered the prayer for condonation of delay but in some cases the Court may refuse to condone the delay in as much as the Government is not accepted to keep watch whether the contesting respondent further put the matter in motion. The delay in official business requires its pedantic approach from public justice perspective. In a recent decision in the case of [Union of India vs. Nirpen Sharma](#) AIR 2011 SC 1237 the matter came up against the order passed by the High Court condoning the delay in filing the appeal by the appellant-Union of India. The High Court refused to condone the delay on the ground that the appellant-Union of India took their own sweet time to reach the conclusion whether the judgment should be appealed or not. The High Court also expressed its anguish and distress, the way the State conduct the cases regularly in filing the appeal after the same became operational and barred by limitation.”

“10. In the instant case as noticed above, admittedly earlier objection filed by the Respondent-State under Section 47 of the Code was dismissed on 17.8.2010. Instead of challenging the said order the Respondent-State after about one year filed another objection on 15.9.2011 under Section 47 of the Code which was finally rejected by the executing court. It was only after a writ of attachment was issued by the executing court the respondent

preferred civil revision against the first order dated 17.8.2010 along with a petition for condonation of delay. Curiously enough in the application for condonation of delay no sufficient cause has been shown which entitle the respondent to get a favourable order for condonation of delay. True it is, that courts should always take liberal approach in the matter of condonation of delay, particularly when the appellant is the State but in a case where there is serious laches and negligence on the part of the State in challenging the decree passed in the suit and affirmed in appeal, the State cannot be allowed to wait to file objection under [Section 47](#) till the decree holder puts the decree in execution. As noticed above, the decree passed in the year 1967 was in respect of declaration of title and permanent injunction restraining the Respondent-State from interfering with the possession of the suit property of the plaintiff-appellant. It is evident that when the State tried to interfere with possession the decree holder had no alternative but to levy the execution case for execution of the decree with regard to interference with possession. In our opinion their delay in filing the execution case cannot be a ground to condone the delay in filing the revision against the order refusing to entertain objection under Section 47 CPC. This aspect of the matter has not been considered by the High Court while deciding petition for condoning the delay. Merely because the Respondent is the State, delay in filing the appeal or revision cannot and shall not be mechanically considered and in absence of 'sufficient cause' delay shall not be condoned."

9. On the basis of this submission and the authority, the learned counsel for the Respondent Plaintiff submits that as the Defendant has failed and neglected to show sufficient cause for condonation of inordinate delay of 1031 days in preferring the First Appeal, the Civil Application deserved to be dismissed with costs.

10. We heard both sides. It is to be noted that in the present proceedings the Applicant is a Municipal Corporation. To take decision on behalf of the Corporation, they have to consult several officers. When the Plaintiff has filed Execution Application, at that time, the

Applicant learnt that without refunding the mobilization advance the Plaintiff has proceeded to execute the decree. At that time the Applicant was decided to take appropriate steps for recovery of their amount. They filed Special Civil Suit No.1277/2015 in October 2015 for recovery of mobilization advance and filed the present First Appeal.

11. It is to be noted that the Apex Court in the matter of ***N.Balkrishnan Vs. M. Krishnamurthy (1998) 7 SCC 123*** held that the object of fixing the time limit is not meant to destroy the rights. The law of limitation fixes a lifespan for such legal remedy for the general welfare.

12. The First Appeal No.447/2014 preferred by the Respondent Plaintiff has already been admitted by this court on 24.02.2016. Even notices are not duly served on the Applicant Defendant in that First Appeal till today. The authority cited by the learned counsel for the Respondent Plaintiff in the matter of Post Master General & Ors (supr) and Amalendu Kumar Bera & Ors. (supra) are not applicable in the facts and circumstances of the present case, because in the case in hand the Respondent Plaintiff has already filed the First Appeal challenging the same judgment and decree and the First Appeal is admitted by this court.

13. Considering these facts and the law declared by the Apex Court in N Balkrishnan (supra), we are of the opinion that the Applicant has made out a case for allowing the Civil Application. At the same time, they have to pay cost of Rs.75000/- and also the Applicant to make enquiry and recover the cost amount from the concerned officer.

14. Hence, following order is passed:

- a. Delay in preferring the First Appeal is condoned.
- b. The Applicant to pay cost of Rs.75000/- to the Respondent Plaintiff within two weeks from today, failing which the Civil Application shall stand dismissed without further reference to the court.
- c. Cost to be deposited in the Registry or to be paid directly to the advocate for the Applicant.
- d. If cost is deposited in the Registry within stipulated time as stated hereinabove, the Respondent Plaintiff can withdraw the same unconditionally.
- e. Civil Application stands disposed off accordingly.

(SARANG V. KOTWAL, J.)

(K.K. TATED, J.)