

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

**COMMERCIAL NOTICE OF MOTION (L) NO.775 OF 2018
WITH
COMMERCIAL NOTICE OF MOTION (L) NO.774 OF 2018
IN
COMMERCIAL APPEAL (L) NO.352 OF 2018
IN
CHAMBER SUMMONS (L) NO.495 OF 2018
IN
COMMERCIAL EXECUTION APPLICATION (L) NO.673 OF 2018
IN
SUIT NO.345 OF 2015**

Pujit Ravikiran Aggarwal & Anr.

... Appellants

Versus

Vardhaman Developers Ltd. & Ors.

... Respondents

- Mr. Chinmay Acharya i/b Susmit Phatale a/w Adv.Omkar Kulkarni for Appellants.
- Mr.D.D. Madon, Senior Advocate a.w Mr. Karl Tamboly, Ms. Kausar Banatwala, Ms. Gauri Sakhardande & Mr. Tushar Goradia for Respondents.
- Mr.Pujit Aggarwal, Applicant No.1 present.
- Mr.D.R. Shetty, Court Receiver a/w Ms.Kavita Ambekar, 1st Asst. Court Receiver present.
-

**CORAM : SHANTANU KEMKAR &
SARANG V. KOTWAL, JJ.**

DATE : 30th AUGUST, 2018.

P.C. :

The Applicants in the present Notice of Motion have

preferred Commercial Appeal Lodging No.352 of 2018 against the order dated 20/04/2015 passed by a learned Single Judge of this Court in exercising jurisdiction of Commercial Court. By the impugned order dated 20/04/2018, the learned Single Judge had appointed Court Receiver in respect of properties mentioned in the impugned order. The Applicants have preferred an Appeal u/s 13 of the Commercial Courts, Commercial Division and Commercial Appellate Division of High Court Act, 2015 (referred to as Commercial Court's Act hereinafter).

2. Section 13 of the Commercial Courts Act provides period of 60 days for filing the Appeal against the order passed by the Commercial Division of a High Court to the Commercial Appellate Division of the High Court.
3. The impugned order is passed on 20/04/2018 and the Appeal is filed on 03/08/2018. Thus, there is a delay in filing the Appeal. The Applicants have taken out a Notice of Motion

for condonation of delay. The prayers in the said Notice of Motion mention that there is a delay of 75 days in preferring the Appeal.

4. In support of the Notice of Motion, the Applicants have filed an affidavit dated 03/08/2018 affirmed by the Applicant No.1 in which following averments are made in paragraph No.4 ;

“4(a). I say that although the order was passed on 20 April 2018, the same was not uploaded on the website of the Hon'ble Court. Accordingly, on 8 June 2018 I instructed my Advocates to apply for the certified copy of the same was not received on 21 June 2018.

(b). I say that I ought to have filed an appeal within 30 days i.e. on or before 20 April 2018 however on account of multiple litigations pending before multiple courts for which I was seeking legal advice. I was unable to give my attorneys specific instructions to prefer the present appeal.

Though, in paragraph No.4 it is mentioned that the Appeal ought to have been filed on or before 20/04/2018, in fact, the date should have been mentioned as 20/06/2018 as the last date of filing of the Appeal. Be that as it may, the contention of the Applicants in these averments is that the order dated 20/04/2018 was not uploaded on the website of the High Court. On 08/06/2018, the Applicant No.1 instructed his Advocate to apply for the certified copy. The Applicant No.1 has also averred that on account of multiple litigations before multiple Courts he could not give specific instructions to his attorneys to prefer the Appeal.

5. The order dated 08/08/2018 passed by another Division Bench in the present Notice of Motion shows that the learned Counsel for the Appellants had sought liberty to file an Additional Affidavit in support of the Notice of Motion for condonation of delay. Thereafter the Additional Affidavit in support of the Notice of Motion affirmed by Applicant No.1 on 24/08/2018 was produced before the Court. In the Additional Affidavit the Applicant Pujit Aggarwal has made further

averments in paragraph Nos.4 and 5 as follows;

- “4. I say that, the impugned order was passed 20.04.2018, however, the same was not uploaded on the website of the Bombay High Court. I say that, after the said order was passed, I was waiting for the said impugned order to get uploaded. I say that further, I tried to take opinion of various advocates in that regards, but however, contradictory opinions were expressed by the advocates. I say that, the Impugned Order was not uploaded & therefore, there was confusion in my mind, that since the impugned order was not uploaded then in that case whether the order is till final or not, or the said order was still before the Ld. Single Judge for making necessary corrections.
5. I say that later on I instructed my advocate to apply for certified copy of the impugned order on 08.06.2018 and to give a try whether we get the copy of the impugned order. I say that upon that the said application, I received the copy of the impugned order on 21.06.2018, which was ready on 11.06.2018. I say that, till date the said order is not uploaded on the website of Bombay High

Court.”

6. Again the thrust of the contention in this Additional Affidavit, was that the order was not uploaded on the website of the High Court, till affirmation of the additional affidavit dated 24.08.2018.

7. We have perused the copy of the impugned order which is annexed to the Appeal memo. The Applicants have obtained certified copy of this order. A photocopy of the said order is annexed to the Appeal memo. At the bottom of each page of the copy attached to the Appeal memo, there is a clear information printed which shows that the order was uploaded on 24/04/2018. The Applicants had received the Certified Copy on 21/06/2018 and on each page of that copy it was clearly mentioned that the order was uploaded on 24/04/2018. In spite of this, the Applicants have repeatedly averred in the affidavits that the order was not uploaded on the High Court website. The Additional Affidavit affirmed on 24/08/2018 mentions that till

date the order was not uploaded on the website of Bombay High Court. We find such averments to be patently false. The Applicants are claiming equitable relief against the impugned order and yet they have not approached this Court with clean hands. The Applicants have repeatedly made false averments and therefore, in our opinion, they do not deserve any relief from this Court in the present matter.

8. Though, making false averments and misleading the Court is a serious matter, the Applicant No.1 Pujit Aggarwal, who is present in the Court, as well as his Advocates namely Mr. Chinmay Acharya, Mr. Susmit Phatale (Advocate on record) and Mr. Omkar Kulkarni, have tendered unconditional apology orally before us. In that view of the matter, we are not inclined to take any further action in this matter. However, in these circumstances we are not inclined to grant any relief to the Applicants in the present Notice of Motion. With the result, the Notice of Motion for condonation of delay is rejected. Consequently, the Commercial Appeal Lodging No.352 of 2018

is not entertained and is dismissed. Similarly, Notice of Motion (L) No.774 of 2018 in Commercial Appeal Lodging No.352 of 2018 stands dismissed.

(SARANG V. KOTWAL, J.)

(SHANTANU KEMKAR, J.)