

Urmila Ingale

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
NOTICE OF MOTION NO. 1922 OF 2017
IN
APPEAL (L) NO. 403 OF 2017
IN
NOTICE OF MOTION NO. 370 OF 2010
IN
SUIT NO. 272 OF 2010

Essel Propack Ltd .. Applicant

In the matter between

Essel Propack Ltd. .. Appellant

Vs.

Essel Kitchenware Ltd. and anr. .. Respondents

Dr.Sheetal Vohra i/b Mr.Amol A. Deshpande, for Applicant.
Mr.Hiren Kamod a/w Ms.Rinku Gajria, Ms.Raina Gajria i/b
Gajria & Co., for Respondent No.1.

**CORAM : NARESH H.PATIL &
G.S.KULKARNI JJ.**

DATE : 20th JUNE 2018

P.C. :

. Heard learned Counsel for the parties.

2. The Notice of Motion is taken out for condonation of

delay of about 538 days in filing appeal. In Paragraph-5 of the affidavit in support of Notice of Motion it is contended by the applicant as under:-

“It is submitted that the Appellant has filed one suit against third party for infringement of trademark, trade name, domain name containing word 'ESSEL' before the Hon'ble District Judge of Patiala House Court, New Delhi on 16.05.2017. It is submitted that the said suit is titled as *Essel Propack Limited Vs. Essel Marketing and Promotions Pvt. TM 109 of 2017*. It is submitted that the Appellant has engaged Delhi based law firm. It is submitted that while doing research for the said case being *Essel Propack Limited Vs. Essel Marketing and Promotions Pvt. TM 109 of 2017*, the junior Advocate of Delhi based law firm came across impugned order dated 11.03.2017 and immediately informed the Appellant on 27th May 2017. It is submitted that the Appellant came to know of said order for the first time on 27th May 2017 and was shocked to know that its being Notice of Motion being No. 370 of 2010 in suit No. 272 of 2010 tiled *Essel Propack Ltd vs. Essel Kitchenware Ltd*. And Anr has been dismissed. The advocate handling Suit No. 272 of 2010 has never informed the Appellant of the order. It is submitted that the Appellant is also taking steps to change advocate on record. The Appellant has taken steps to apply for certified copy of order on 11th March 2017.”

3. The delay is opposed by filing reply by the respondents.

4. We have heard the learned Counsel appearing for the contesting parties. In view of the facts and circumstances and for the reasons stated in the application, the delay is

required to be condoned. In case delay is not condoned, applicant would suffer prejudice and would lose statutory right to canvass grounds in the Appeal. In the facts, we find that delay needs to be condoned by imposing costs on the applicant.

5. The delay is condoned subject to payment of costs of Rs.25,000/- to the other side, within two weeks from today.

6. Notice of Motion is disposed of.

(G.S.KULKARNI, J.)

(NARESH H.PATIL, J.)