

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**ORDINARY ORIGINAL CIVIL JURISDICTION****REVIEW PETITION (LODG) NO.20 OF 2018****in****APPEAL (L) NO.224 OF 2018**

Aviation Travels Pvt.Ltd.

...Review Petitioner

Versus

1.Bhavesha Suresh Goradia & Ors.

...Respondents

with

NOTICE OF MOTION NO.801 OF 2018**(for Condonation of delay)**

with

Notice of Motion (ST)No.1020 OF 2018

Mr.Rameshwar Totala with Mr.Manoj Badgujar, for the Petitioner.

Mr.Piyush Raheja with Mr.Tejal Kurdukar with Mr.Dharmesh Pandya
I/b. Ashwin Pandya & Associates, for Respondent no.1..

**CORAM : NARESH H. PATIL, ACTING CJ. &
G.S. KULKARNI, J.****DATE : 26^h OCTOBER, 2018**

P.C.:**Notice of Motion no.801 of 2018.**

1. This Notice of motion has been filed by the applicant (original appellant/Review Petitioner) seeking condonation of delay of 27 days in filing the above review petition.
2. Considering the short delay we would have straightway proceeded to allow this notice of motion, however, an objection is raised

on behalf of respondent no.1 in regard to the averments of the applicant in paragraph 5(ii) by which the applicant has explained the delay. This statement in the affidavit reads thus:-

5. The delay has been caused on account of the following reasons:

(i)

(ii) I say that the petitioner came to know about the grounds on which review is sought only after taking the search of original file of the suit i.e. on 29.08.2018, it took a significant amount of time for the petitioner to decide whether or not to proceed with the present Review. Since the petitioner is a company and required to consider the implications of the order and generate a consensus on the way forwards after obtaining legal advice.”

3. The submission of the learned Counsel for respondent no.1 is that this is a false statement made on oath by the applicant and to support this we are shown paragraph 12 of the affidavit in support of the notice of motion of the applicant filed before the learned Single Judge in the application for setting aside the ex-parte decree dated 7 October 2003 which itself was preferred with delay of almost 15 years. In paragraph 12 (page 84) the applicant in fact has stated as under:-

“12. After gaining knowledge about passing of ex-parte decree dated 7th October 2003, the defendant no.1 preferred an application for certified copies of entire proceedings of original suit and the same was received on 18th January 2018. After perusal of said record, it appears that one Bhavesha Suresh Goradia, claiming herself to be one of the beneficiaries of Parikh-Goradia Trust, had filed Suit No.2865 of 1994 essentially against defendant No.1 seeking injunction and damages. Initially, defendant No.1A was

not joined as a party defendant in original suit.”

4. Considering the averments, we are not satisfied with the objection as raised on behalf of respondent no.1. The statements as made in the affidavits are quite distinct. In the earlier affidavit, the applicant says about obtaining certified copies of the record and in the present affidavit in paragraph 5(ii) the applicant says that search was taken of the original file, which took time. We therefore, do not entertain the objection as raised on behalf of respondent no.1.

5. We accordingly allow the notice of motion in terms of prayer clause (i) and (ii).

Review Petition (lodg) No.20 of 2018.

6. We have heard the learned Counsel for the review petitioner and the learned Counsel appearing for respondent no.1. We have perused the record and our judgment/order dated 9 July 2018 of which the review is sought.

7. Having perused the grounds as raised in the review petition and various documents as placed on record including letter dated 18 July 1997 (page 181 of the paper book) as addressed by Narayanan & Narayanan Advocate to the Advocate for Respondent no.1 (M/s.Pandya Gandhi & Co.), we find that there is no error apparent on the face of the order or any other ground is made out, so that we can exercise our jurisdiction under Order XLVII Rule 1 of the Code of Civil Procedure to

review our judgment/order dated 9 July 2018.

8. Review petition is accordingly rejected.

9. As review petition is disposed of as aforesaid, pending Notice of Motion (st) no.1020 of 2018 does not survive. It is disposed of.

[G.S. KULKARNI, J.]

[ACTING CHIEF JUSTICE]