

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Civil Application No. 2205/2018
in
First Appeal (ST) No. 1777/2018

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders	Court's or Judge's orders.
	Mrs. Madhuri More for the Applicant- Municipal Corporation Mr. Vishal Kanade with Mr. Kunal Mehta and Mr. Naishadh Bhodia for the Respondent

CORAM : K.K.TATED, J.
DATED : APRIL 9, 2019

P.C.

Heard. By this Civil Application, the Applicant is seeking condonation of 314 days delay in filing the Appeal challenging the judgment and decree dated 31.01.2017 passed by the Bombay City Civil Court, Mumbai in L.C.Suit No.2848/2012 restraining them by an order of injunction from demolishing the notice structure and/or implementing the said notice.

2 Liberty granted to the Applicant to carry out amendment in the prayer clauses during the course of the day.

3 The learned counsel for the Applicant submits that there is delay in filing the First Appeal, as their advocate was overburdened with the constant flow of cases and he had to attend the court everyday, apart from drafting the written statement/notices in the matters including the routine matters. She submits that they have good chance of success in the matter. She submits that in the interest of justice, this Hon'ble Court be pleased to condone the delay in filing the First Appeal. She submits that if delay is not condoned, irreparable loss will be caused to them.

4 On the other hand, the learned counsel for the Respondent - Plaintiff has vehemently opposed the Civil Application. He submits that the Applicant has not shown any sufficient cause for condonation of more than 300 days in filing the First Appeal. Therefore, there is no question of allowing the Civil Application.

5 Heard both sides at length. It is to be noted that in the present proceedings the Trial Court, by its judgment and decree dated 31.01.2017 restrained the Applicant

from taking any coercive steps against the Respondent - Plaintiff in respect of the unauthorised construction as described in the notice u/s.351 of the MMC Act. Apart from that, the reasons disclosed by the Applicant in para 4 and 5 of the Civil Application make out a case for allowing the Civil Application. At the same time, they have to pay costs of Rs.2500/-.

6 Hence, the following order is passed:

a. Delay in filing the First Appeal is condoned.

b. The Applicant to pay costs of Rs.2500/-.

c. Costs to be deposited in the office of the Kirtikar Law Library, High Court, Mumbai on or before 04.05.2019 and place a receipt thereon on record, failing which the Civil Application shall stand dismissed without further reference to the court.

d. Civil Application stands disposed of accordingly.

(K.K.TATED, J.)