

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Civil Application No.711/2019
with
First Appeal (ST) No.2280/2019

Liberty Pesticides & Fertilizers Ltd. Applicant
Vs.
Smt. Rajrani Shamsunder Makharia Respondent

Ms. Dhanali P. Kubal for the Applicant
Ms. Suvarna Joshi for the Respondent

CORAM: K.K.TATED, J.
DATED : OCTOBER 14, 2019

P.C.

1 Heard. This Application is for condonation of 3 years and 293 days delay in preferring the appeal challenging the judgment and decree dated 05.03.2015 passed by the Bombay City Civil Court at Mumbai in Summary Suit No.8162/1998 (High Court Suit No.3321/1998) holding that the Respondent - Plaintiffs are entitled to sum of Rs.4,22,552/- with interest @ 12% p.a. on the principal amount.

2 The learned counsel for the Applicant submits that initially, the suit was before this court. She submits that in the Summary Suit, the Respondent - Plaintiff had filed Summons for Judgment No.1082/1998 which was contested by the Applicant by filing their reply. She submits that the said Summons for Judgment was decided by this court by order dated 22.01.2001 and granted unconditional leave to defend the suit. She submits that thereafter the Applicant filed their written statement in the matter.

3 The learned counsel for the Applicant submits that in the meantime, because of change of pecuniary jurisdiction, the matter was transferred to the Bombay City Civil Court at Mumbai. She submits that when the matter was transferred to the Bombay City Civil Court at Mumbai neither they received any notice from the Registry of this Court nor from the Registry of the Bombay City Civil Court at Mumbai. She submits that for want of notice, it remained on their part to contest the said proceeding. She submits that even it remained on the part of their advocate to remain present before the Bombay City Civil Court at Mumbai when the matter was called out. She submits that the Bombay City Civil Court at Mumbai had passed exparte judgment and decree dated 05.03.2016. She submits that for the first time, they learnt about the judgment and decree on 24.12.2018 when the Respondent – Plaintiff personally approached the Applicant at their office. Thereafter they immediately applied for certified copies on 18.01.2019 and filed the First Appeal.

4 The learned counsel for the Applicant submits that neither their advocate who filed vakalatnama on their behalf nor the Respondent – Plaintiff informed them about the judgment and decree passed by the Trial Court, immediately. She submits that because of mistake on the part of the advocate, the litigant should not suffer. She submits that for want of knowledge about the transfer, it remained on their part to take appropriate steps to protect their interest. She submits that they have good chance of success. She submits that in the interest of justice, this

Hon'ble Court be pleased to condone the delay in filing the First Appeal and the matter be heard on merits. She submits that if the delay is not condoned, irreparable loss will be caused to the Applicant.

5 On the other hand, the learned counsel for the Respondent – Plaintiff has vehemently opposed the present Civil Application. She submits that there is no sufficient ground for condonation of inordinate delay of 3 years and 293 days in filing the First Appeal. She submits that the summons was duly served on the Applicant – Defendant. She submits that even the Summons for Judgment No.1082/1998 was contested by the Applicant by filing their reply. Thereafter, this court dismissed the Summons for Judgment by order dated 22.01.2001 granting unconditional leave to the Applicant to defend the suit. Thereafter the Applicant has filed their written statement. She submits that when the matters were transferred from the High Court to the Bombay City Civil Court at Mumbai, same was notified on the official website of this court. She submits that as on today, there is a decree in favour of the Respondent. Apart from that the Applicant has failed to disclose sufficient cause for condonation of inordinate delay in filing the First Appeal. Therefore, there is no question of allowing the Civil Application and same is liable to be dismissed with costs.

6 Heard. The main grounds shown by the Applicant for condonation of delay are as under:

- a. Want of knowledge about the judgment and decree dated 05.03.2015 passed by the Bombay City Civil Court at Mumbai.
- b. No notice either from this court or from Bombay City Civil Court at Mumbai for transfer of the matter from this court to the Bombay City Civil Court at Mumbai.
- c. No communication from their advocate about the judgment and decree passed by the Trial Court.

7 The Applicants were duly served in summary suit. They had also participated in the Summons for Judgment and filed their written statement. It is to be noted that when the matters were transferred from this court to the Bombay City Civil Court at Mumbai, same was notified on the official website of this court. Moreover, courts were also allotted all the matters. These facts were not noticed by the Applicant or their Advocate. Nothing is stated in the Civil Application about the steps taken by the Applicant against the said advocate, whether the the Applicant has called upon his Advocate to explain why he remained absent before the Bombay City Civil Court at Mumbai. Not only that, name of the said Advocate is also not disclosed in the Civil Application .

8 Considering these facts, I do not find any reason to entertain the present Civil Application . Hence, following order is passed:

- a. The Civil Application stands dismissed.

- b. In view thereof, the registration of the First Appeal stands rejected.
- c. No order as to costs.

(K.K.TATED, J.)