

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**CIVIL APPLICATION NO.3359 OF 2017
IN
FIRST APPEAL (ST.) NO.4374 OF 2017**

Mukteshwar Mahadev Temple
Trust

Through their Constituted Attorney

Dr. Narendra Patil

... Applicant

Versus

Namdev Thete

And Another

... Respondents

.....

Mr. Sandeep S. Salunkhe for the Applicant.

Mr. Shyam for Respondent No.1.

.....

CORAM : K. K. TATED, J.

DATE : 29 JULY 2019

P. C. :

. Heard learned Counsel for the parties.

2 By this Civil Application, the Applicant (original defendant no.2) is seeking condonation of delay of 138 days in filing the First Appeal, challenging the judgment and decree dated 12 August 2016 passed by the City Civil Court, Greater Bombay in Long Cause Suit No.1410 of 2011, setting aside the notice dated 23 February 2011 issued by the Respondent-corporation under Section 53(1) of Maharashtra Regional Town Planning Act, 1966 as well as the order dated 15 July 2011 passed by Assistant Municipal Commissioner in respect of the unauthorized

construction in the suit premises.

3 Learned Counsel for the Applicant submits that, Respondent No.1 (original plaintiff) is the tenant of the Applicant's property. Learned Counsel for the Applicant submits that, the Applicant filed the application/complaint to the Corporation about unauthorized construction carried out by the Plaintiff.

4 Learned Counsel for the Applicant submits that, the trustees of the trust are from Punjab. He submits that there was a communication gap between the the Advocate and the trustees, hence, there is delay in filing the First Appeal before this Court. He submits that the Applicant has a good chance of success in the proceedings. He submits that in the interest of justice, this Court be pleased be condoned delay in filing the First Appeal. He submits that if the delay is not condoned in filing the First Appeal, a great prejudice would be caused to the Applicant.

5 On the other hand, Mr. Shyam, learned Counsel for Respondent No.1 vehemently opposed the present application. He filed the affidavit in reply dated 29 July 2019, the same is taken on record.

6 Learned Counsel for Respondent No.1 submits that the Applicant failed to show sufficient cause for condoning the delay in filing the First Appeal. He submits that the Applicant has not shown, which trustee is residing at Punjab. In view of this, he relies on paragraph-4 of his reply. He submits that the Applicant

has filed to show sufficient cause, hence the present Civil Application is required to be dismissed with costs.

7 Considering the submissions made by learned Counsel for the Applicant and the averments made in the civil application, I am satisfied that the Applicant has made out a case for allowing this Civil Application with costs to Respondent No.1. Hence, the following order.

: O R D E R :

- i) The delay in filing the First Appeal is condoned ;
- ii) The Applicant to pay cost of Rs.1,000/- to Respondent No.1 or his Advocate within two weeks from today, failing which, the Civil Application shall stand dismissed ;
- iii) The civil application is disposed of accordingly.

(K. K. TATED, J.)