

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO. 1322 OF 2017
IN
FIRST APPEAL NO. 119 OF 2011

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders	Court's or Judge's orders.
	Ms. Khevana Dagli I/b Ashok Saraogi for the Applicant. Mr. Sharad Wakchoure I/b M/s. Kishore Thakordas & Co. for the Respondent.

CORAM: K.K.TATED, J.
DATED : 26/08/2019

P.C.

- 1 Heard learned Counsel for the parties.
- 2 By this Civil Application, the Applicant original plaintiff is seeking condonation of 1152 days delay in compliance of earlier orders dated 07.04.2011 and 28.06.2013.
- 3 In the present proceeding, the Applicant original plaintiff filed S.C. Suit No. 723 of 2008 for the possession of stall situated at 10, Entrance of Sadanand Wadi, V.P. Road, Girgaon, Mumbai – 400 004. That suit was dismissed by Judgment and Decree dated 10.08.2010. Thereafter, the Appellant Plaintiff preferred First Appeal before this

Court. The First Appeal was admitted by this Court on 07.04.2011 and directed the Applicant to file private paper book within one year, failing which First Appeal shall stand dismissed without further reference to the Court. As the Applicant failed to file private paper book within time, the First Appeal stands dismissed.

4 Thereafter, the Applicant preferred Civil Application No. 388 of 2012 for restoration of First Appeal and allowing him to file private paper book. That Civil Application was allowed by this Court by order dated 20.06.2013 directing Applicant to file private paper book within a period of 4 weeks from the date of order. In spite of extension of time, the Applicant failed to file private paper book. Hence, the Registrar by its order dated 07.04.2011 dismissed the First Appeal in view of conditional order passed by the Court. Now, there is a delay of 1152 days in filing the present Civil Application for restoration of First Appeal No. 119 of 2011.

5 The learned Counsel for the Applicant submits that as the Applicant was not having any residential accommodation at Mumbai and he was suffering from various disease, he left the Mumbai and went to his native

place at Gramharpur Gadhwa, District Sultanpur, U.P. and has instructed his son Manoj Jaiswal to follow the matter. She submits that the Applicant's son failed and neglect to follow the matter.

6 The learned Counsel for the Applicant submits that in the interest of justice, this Hon'ble Court be pleased to condone the delay and allow the Applicant to file the private paper book so that the matter can be decided on its own merits. She submits that if the delay is not condoned, irreparable loss and injury will be caused to the Applicant.

7 On the other hand, the learned Counsel for the Respondent vehemently opposed the present application. He submits that the Applicant failed to show the sufficient cause for condonation of delay. Hence, there is no substance in the present Civil Application and same is required to be dismissed with costs.

8 I heard both the Counsel at length. Bare reading of the Civil Application, it comes to know that the same is filed in very casual manner. Though the Applicant has stated in para 3 of the Civil Application that he has instructed his son Manoj to follow up the matter, there is no evidence of the said person to show that the Applicant has

instructed him to do the needful in filing the private paper book. Apart from that reasons given by the Applicant in para 3 of the Civil Application that he was suffering from various disease and could not able to walk properly. Not a single medical certificate was produced on record, in this regard. Bare reading of the Civil Application, it shows that Applicant has failed to make out a case for condoning the delay. Apart from that filing of the paper book, it is the duty of the Advocate. There is no question of any reasons of the Applicant whether he is keeping well or not.

9 Considering the above mentioned facts, I do not find any reason to entertain such type of Civil Application.

10 Hence, Civil Application is rejected.

11 No order as to costs.

(K.K.TATED, J.)