

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Civil Application No.1563/2015
with
First Appeal (ST) No.8403/2015
with
Civil Application No.1564/2015
with
Civil Application No.1555/2015

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders	Court's or Judge's orders.
Mr. Gauraj Shahi /b. M/s. Chitnis Vaithy & Co. for the Applicant Mr. A. S. Tripathi I/b. M. S. pandey for the Respondent	

CORAM: K.K.TATED, J.
DATED : OCTOBER 3, 2019

P.C.

1 Heard. This Application is for condonation of 4 years and 161 days delay in preferring the appeal challenging the judgment and decree dated 30.08.2010 passed by the Bombay City Civil Court at Mumbai in S.C.Suit No.240/2005 allowing the Respondent - Plaintiff's suit u/s.6 of the Specific Relief Act for restoration of the suit property.

2 In the present proceedings the Respondent - Plaintiff had filed the said

suit for restoration of the suit premises in Correa Chawl, behind Vasari Hill, Laxmi Singh Compound, Vasari Hill No.2, Near Dholedev Temple, Mulund Link Road, Goregaon (W) admeasuring about 21' x 18' sq.ft.

3 After hearing both sides, the Trial Court decreed the suit and directed the Applicant to handover the possession of the suit premises to the Respondent - Plaintiff.

4 The learned counsel for the Applicant submits that in the present proceedings they filed their written statement dated 08.08.2005 before the Trial Court and specifically made a statement that they are not concerned with the suit premises. Moreover, they have specifically stated that some other person i.e. one Mr. Pascal Correa was owner of the suit premises. Therefore, there is no question of entertaining the said suit. In support of his contention, the Applicant relies on para (c) of the written statement which reads thus:

“(c) These Defendants state that the Defendants are the owners of the property bearing Survey Nos.418, Hissa

No.1, CTS No.199, Survey No.416, Hissa No.1, CTS No.1205, Survey No.422, Hissa No.3, CTS No.1195/6. These Defendants further state that, the aforesaid three properties have been transferred in pursuance of an agreement entered into by and between by the Defendants to one M/s. Atul Builders and the same is now in the use, occupation and possession of M/s. Atul Builders. The Defendants crave leave to refer to and rely upon the documents showing the title of Defendants in respect of the aforesaid property.”

5. The learned counsel for the Applicant submits that in spite of these facts, the Trial Court passed the impugned judgment and decree. He submits that initially, the Applicants were under bona fide impression that, as they were not concerned with the suit premises there is no question of filing the First Appeal challenging the said order. In support of his contention, he relies on para 7 and 8 of the Civil Application. He submits that when the Bailiff tried to execute the decree, at that time they learnt that the Respondent is trying to take possession of their property. He submits that not only that the Bailiff has executed the decree and handed over possession to the Respondent Plaintiff. He submits that because of bona fide impression on the part of the Applicant

that they were not concerned with the decree, it remained on their part to challenge the same in this court within time. He 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. He submits that if the delay is not condoned irreparable loss will be caused to them.

6 On the other hand, the learned counsel for the Respondent - Plaintiff has vehemently opposed the Civil Application. He submits that the objection raised by the Applicant in the Civil Application on merit of the matter, have already been considered by the Trial Court and passed the impugned judgment and decree. He submits that there is not cogent reason for condonation of more than 4 years delay in filing the First Appeal. Hence, the Civil Application is liable to be dismissed with costs.

7 In the present proceedings the impugned judgment and decree was passed on 30.08.2010 and the Applicant collected the certified copy in September 2010. The reason given by the Applicant

that they were under impression that the judgment and decree passed by the Trial Court is in respect of some other property which does not belong to the Applicant, cannot be a ground for condonation of delay. Because the Applicant had appeared before the Trial Court and filed written statement. Moreover, the Trial Court has passed the impugned judgment and decree after hearing both the parties.

8 Considering these facts, I am of the opinion that the Applicant has failed to make out any case for condonation of inordinate delay of 4 years and 161 days in filing the First Appeal.

9 Hence, following order is passed:

- a. Civil Application for condonation of delay stands rejected.
- b. In view thereof, registration of the First Appeal stands rejected.
- c. Consequently, the Civil Application No.1555/2015 for stay stands dismissed as infructuous.
- d. Civil Application No.1555/2015 stands dismissed as infructuous.

(K.K.TATED, J.)