

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Civil Application No.2391/2019
with
First Appeal (ST) NO.8739/2019
with
Civil Application No.2392/2019
with
Civil Application No.2300/2019

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders	Court's or Judge's orders.
	Mr. Raul Rao I/b. Ms. U. M. Jhaveri for the Applicant Mr. Vineet E. Pereira for Respondent No.1.

CORAM : K.K.TATED, J.
DATED : JULY 15, 2019

P.C.

1 Heard. By this Civil Application, the Applicant - Defendant No.2(a), 2(b) and 2(d) is seeking condonation of 5 years and 83 days delay in filing the First Appeal challenging the judgment and decree dated 27.09.2013 passed by the Bombay City Civil Court in L.C.Suit No.4705/1998 directing the Corporation to demolish the suit structure i.e. construction carried out on a plot of land bearing CTS No.354 of village Kurla, Mumbai - 400070.

2 The learned counsel for the Applicant submits that in the present proceedings, the advocate who appeared in the Trial Court, has failed to inform the Applicant about the decision immediately. He submits that during that period the Applicant No.1 was not keeping well. He submits that the Applicant made enquiry on several occasion with his advocate in the Trial Court, to know the decision in their matter. He submits that, the said Advocate failed and neglected to inform the Applicant about the same. He submits that the Applicant, for the first time, learnt about the decision given by the Trial Court, when a copy of the Execution Application No.359/2015 was served on the Applicant somewhere in December 2016. He submits that the Applicant has made enquiry and learnt that the Trial Court has permitted the Corporation to demolish the suit structure. Hence, the Applicant applied for certified copy on 11.03.2019 and same was delivered on 12.03.2019 and thereafter the Applicant filed the present proceedings with the present Civil Application for condonation of delay.

3 The learned counsel for the Applicant

submits that because of mistake on the part of an Advocate the litigant should not suffer. He submits that they have good chance of success in the matter. He submits that if the Civil Application is not allowed irreparable loss will be caused to them. He submits that at present, the Respondent Corporation has partially demolished the suit structure. Hence, 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.

4 On the other hand, the learned counsel for the Respondent No.1 Plaintiff has vehemently opposed the Civil Application. He submits that the Applicant has failed and neglected to show sufficient cause for condonation of delay. He submits that the impugned judgment and decree was passed on 27.09.2013. He submits that the Applicant has filed the Application for certified copy on 11.03.2019 and thereafter filed the present First Appeal. He submits that though the Applicant has blamed their earlier Advocate who appeared on behalf of them before the Trial Court, they failed and neglected to

place on record any document to show that, they directed the advocate to apply for certified copy immediately. He submits that the Applicants are educated persons. The Applicant No.1 is a teacher. He submits that the Respondent Plaintiff filed Execution Application No.339/2015 for execution of the impugned judgment, and served the Applicants in December 2016. In spite of that, they failed and neglected to file the First Appeal immediately. There is no substance in the Civil Application as the Applicant took two and half years to file the present Application even from the date of knowledge in December 2016. The learned counsel for the Respondent Plaintiff submits that even the suit premises has already been demolished recently. Hence, there is no substance in the Civil Application. Same be dismissed with costs.

5 The learned counsel for the Respondent submits that the apex court, in the matter of ***Balwant Singh (Dead) Vs. Jagdish Singh & Ors. AIR 2010 SC 3043*** held that even if the term “sufficient cause” has to receive liberal construction, it must be squarely fall

within the concept of reasonable time and proper conduct of the concerned party. He submits that the Applicant has failed to show, as to why, the Applicant took more than 5 years to challenge the impugned judgment and decree.

6 The learned counsel for the Plaintiff also relies on the judgment of the apex court in the matter of ***Basawaraj & Ors. Vs. The Spl. Land Acquisition Officer JT 2013 (13) SC 469***. He submits that in this authority, also, the apex court has specifically held that on unlimited limitation would lead to sense of insecurity and uncertainty, and therefore, limitation prevents disturbance or deprivation of what may have been acquired in equity and justice by long enjoyment or what may have been lost by a party's own inaction, negligence' or laches. Paragraph 13.1 of the said judgment reads thus:

“13.1 unlimited limitation would lead to sense of insecurity and uncertainty, and therefore, limitation prevents disturbance or deprivation of what may have been acquired in equity and justice by long enjoyment or what may have been lost by a party's own inaction, negligence' or laches.”

6 On the basis of this submission, the learned counsel for the Plaintiff submits that there is no substance in the Civil Application. Same be dismissed with costs.

7 It is to be noted that in the present proceedings there is delay of more than 5 years in filing the First Appeal.

8 Entire blame is on Adv. Mr. Pawar, who appeared on behalf of the Applicant in the Trial Court. But along with Civil Application, the Applicant has not placed on record, single document to show that they called upon Adv. Pawar to explain why he failed and neglected to file an Application for certified copy and/or the decision given by the Trial Court. Apart from that when the Applicant learnt about the judgment and decree in December 2016, when Execution Application No.359/2015 was duly served on them, they failed and neglected to take immediate steps for filing the First Appeal. The First Appeal is filed in March 2019 i.e. after more than two and half years from the date of knowledge.

9 Considering these facts and the law

declared by the apex court, I do not find any substance in the Civil Application.

10 Hence, following order is passed:

- a. The Civil Application stands rejected.
- b. In view thereof, registration of the First Appeal stands rejected.
- c. Consequently, Civil Application No.2392/2019 for stay and Civil Application No.2300/2019 for directions, stand dismissed as infructuous.

(K.K.TATED, J.)