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

**CIVIL APPLICATION NO. 825 OF 2016
IN
APPEAL FROM ORDER (STAMP) NO. 7738 OF 2016**

M/s. Rizvi Estates & Hotels Pvt. Ltd. .. Applicant
Vs.
Augustine Louis Fernandes & Anr. .. Respondents

Mr. Joel D'souza a/w. Mahesh Mishra, Mr. Ajay Bhardwaj I/b Shafiquddin
Q. Siddique for the Applicant.
Mr. M. R. Irani for Respondent No.1.

CORAM : K. K. TATED, J.
DATE : 28th MARCH, 2019.

P. C. :

1. Heard learned Counsel for the parties.
2. By this Civil Application, original Defendant No.2 is seeking condonation of 60 days delay in filing the Appeal from Order challenging the order dated 13.11.2015 passed by City Civil Court, Bombay in Notice of Motion No. 981 of 2011 in L. C. Suit No.745 of 2011 restraining the Respondent-Corporation from demolishing the suit premises of the Plaintiff and notice dated 21.02.2011 under Section 351 of the Municipal Corporation Act and order dated 15.03.2011 till hearing and final disposal of the suit.
3. Learned Counsel D'souza for the Applicant submits that they learnt about the impugned order in the month of March, 2016 and thereafter immediately they contacted the Advocate and filed present Appeal from

Order. He further submits that the Applicant is senior citizen and hence there was delay on their part to file the Appeal from Order within time. Learned Counsel for the Applicant submits that in the interest of justice this Hon'ble Court be pleased to condone the delay in filing the Appeal from Order and matter to be heard on its own merits.

4. On the other hand, learned Counsel Shri Irani for the Respondent No.1-original Plaintiff vehemently opposed the present Civil Application. He submits that the Applicant made incorrect statement on solemn affirmation in the present Civil Application. Hence, they are not entitled for any reliefs from this Court. Learned Counsel for Respondent No.1 submits that the Applicant in paragraph 4 of the Civil Application stated that the Applicant was not aware of the impugned order till 02.03.2016. Whereas, the Applicant filed the application for certified copy in the trial Court on 03.12.2015 itself. This itself shows that the Applicant has made incorrect statement before this Court.

5. Learned Counsel for Respondent No.1 further submits that in paragraph 6 of the Civil Application, the Applicant has stated that the Applicant is senior citizen and solely depend on his Advocate in the matter. He submits that the Applicant is a private company known as M/s. Rizvi Estates and Hotels Pvt. Ltd. Hence, there is no question of senior citizen for the company. He makes incorrect statement for obtaining favourable order from this Court in the Civil Application. Hence, the Civil Application is required to be dismissed only on this ground that incorrect statement is

made in paragraph 4 as well as paragraph 6 of the Civil Application. He further submits that in any case in the present proceeding, there is dispute between the Plaintiff and Respondent No.2 i.e. Corporation. He submits that the Corporation issued notice under Section 351 of the MMC Act for demolition of alleged unauthorized construction and that is stayed by the trial Court till the hearing and final disposal of the suit. Therefore, there is no question of interfering in the Application on behalf of the Applicant.

6. I heard both the sides. Bare reading of the Civil Application and particularly paragraphs 4 and 6 of the Civil Application, the Applicant has made incorrect statement on solemn affirmation. Considering this fact that the Applicant has made incorrect statement, the Applicant is not entitled relief. Hence, following order is passed:

- (a) The Civil Application stands rejected.
- (b) At this stage, learned Counsel for the Applicant submits that in the interest of justice, this Hon'ble Court be pleased to expedite the hearing of the Suit No. 745 of 2011.
- (c) Considering the submission made by the Applicant, hearing of the L. C. Suit No. 745 of 2011 is expedited.

[K. K. TATED, J.]