

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Civil Application No.1647/2017
in
First Appeal (ST) No.9994/2017

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders	Court's or Judge's orders.
	Mr. Bhupesh Dhumathar i/b. Raman Misra for the Applicant Mrs. Sheetal Mane for Respondent No.2.

CORAM: K.K.TATED, J.
DATED : AUGUST 13, 2019

P.C.

1 Heard. This Application is for condonation of 2802 days delay in preferring the appeal challenging the judgment and decree dated 17.04.2009 passed by the Bombay City Civil Court at Mumbai in L.C.suit No.1621/2006.

2 In the present proceedings the Respondent - Plaintiff filed L.C.Suit No.1621/2006 seeking declaration that the construction admeasuring 10 x 8 made by B.M. walls with A.C. sheets roofs between plot of CTS No.B/698 and B/699 corresponding to TPS Plot Nos.119A and 120A is illegal and to grant mandatory injunction directing

the original Defendant No.2 corporation to demolish the same immediately.

3 After considering the evidence on record, the Trial Court has decreed the suit holding that the construction carried out by the Applicant - Defendant No.1 was unauthorised and directed the corporation to demolish the said construction which was constructed on set back land between CTS No.698 and B-699. The operative part of the said decree reads thus:

“ORDER

- a. Suit is decreed.*
- b. It is hereby declared that the Defendant No.1 made unauthorised construction of suit structure.*
- c. Defendant No.2 BMC is hereby directed to demolish the illegal suit structure of Defendant No.1 constructed on road on set back land between CTS NO.B/698 and B/699 at the costs of Defendant No.1.*
- d. Decree be drawn up accordingly.”*

4 The learned counsel for the Applicant submits that because of mistake on the part of the advocate who appeared on behalf of the Applicant it

remained on their part to file the present appeal immediately. He submits that their advocate never informed the Applicant about the impugned judgment and decree passed by the Trial Court. He submits that they have good chance of success in the matter. He submits that as soon as the Applicant learnt about the judgment and decree passed by the Court, they filed an application for the certified copy and filed the present appeal. In support of this contention, he relies on para 7 of the Civil Application.

5 The learned counsel for the Applicant submits that though the Respondent corporation has filed the Affidavit in Reply in the present Civil Application and made a statement that they have already demolished the suit structure, same is not correct. He submits that till today the structure is intact. Therefore, 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.

6 On the other hand, the learned counsel for the Respondent corporation

has vehemently opposed the Civil Application. She submits that the Applicant has not shown sufficient cause for condonation of more than 7 years delay in filing the First Appeal. She submits that the unauthorised construction was blocked the road of the society and therefore same was demolished in the year 1997. In support of her contention, the learned counsel for the Respondent corporation relies on para 4 of the Affidavit in Reply dated 14.08.2017 which reads thus:

“4. I say that the suit structure adm. 10' x 8' made of B.M. Wall with A.C.sheet roof between the plot of CTS No.B/698 and B/699 corresponding to TPS Plot No.119A and 120A is constructed was demolished on 23.12.1997 on the complaint of original Plaintiff i.e. Respondent NO.1. The structure had block the Road of the society and therefore same was demolished in December 1997. I say that the said notice was challenge by the Appellant by filing L.C.Suit NO.5632 of 2003.”

7 On the basis of this submission, the learned counsel for the Respondent Corporation submits that there is no question of entertaining the present Civil Application and same be dismissed with costs.

8 It is to be noted that there is delay of more than 7 years in filing the First Appeal. It is to be noted that impugned judgment and decree was passed on 17.04.2009, the Applicant - Defendant has filed an application for certified copy on 07.03.2010. There is no explanation in the Civil Application as to why the Applicant took more than 3 years to make an application for certified copy. Apart from that there is no explanation in the Civil Application to condone the inordinate delay of 7 years and 247 days in filing the First Appeal. The Respondent Corporation has specifically stated in the Affidavit in Reply that the unauthorised structure has already been demolished by them. Hence, I do not find any substance in the Civil Application. Hence, following order is passed:

- a. Civil Applicant stands rejected.
- b. In view thereof, the First Appeal and pending Civil Application, if any, stand dismissed with no order as to costs.

(K.K.TATED, J.)