

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Civil Application No.1323/2014
with
First Appeal (ST) No.12334/2013
with
Civil Application No.1324/2014

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders	Court's or Judge's orders.
Ms. Shital Mane I/b. R. A. Malandkar for the Municipal Corporation	

CORAM: K.K.TATED, J.
DATED : SEPTEMBER 6, 2019

P.C.

1 Heard. This Application is for condonation of 409 days delay in preferring the appeal challenging the judgment and decree dated 17.12.2011 passed by the Bombay City Civil Court at Mumbai in L.C.Suit No.2337/2010 allowing the Respondent – Plaintiff's suit for setting aside the notice issued by the Municipal Corporation u/s.351 of the Mumbai Municipal Corporation Act, 1888.

2 The learned counsel for the Applicant submits that immediately after the impugned judgment and award

was passed by the Trial Court they applied for certified copy on 22.12.2011 and a copy of judgment was collected on 14.03.2012 and certified copy of the decree on 19.03.2012. She submits that for filing the First Appeal by the Municipal Corporation, they have to take decision at several level. Hence, there is delay in filing the First Appeal before this court. She submits that they have good chance of success in the matter. In support of her contention, the learned counsel for the Applicant relies on para 4 and 5 of the Civil Application, which read thus:

“4 The application made for certified copy of impugned order on 22.12.2011, the same was collected on 14.03.2012. Further applied for decree on 22.12.2011 and the same was collected on 19.03.2012. The delay is a procedural delay and hence, this Hon'ble High Court is requested to condone the delay in filing the appeal which is unintentional. The Applicants submits that due to overburden of administrative work and regular court attendance, there is delay in filing the appeal. The Applicants submit that they have a good case and they are likely to succeed in the present appeal.

5 The Applicants submit that

there was no intentional delay on the part of lodging the same. The Applicants state that they are enacted and formed for the benefit of public at large and therefore if the delay is not condoned, the Applicants would have to suffer irreparable loss, hardship. The Applicants submit that they have good case on merit and further submit that by condoning the delay, no prejudice would be caused to the Respondent. The Applicants state that it is therefore, necessary in the interest of justice to condone the delay of 409 days in filing the appeal. The Applicants state that the Applicants have excellent chance in succeeding the Appeal."

3. On the basis of these submissions, the 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 First Appeal and the matter be heard on merits. She submits that if delay is not condoned, irreparable loss will be caused to them.

4 In the present proceedings the impugned judgment and decree was passed on 17.12.2011. Though he Applicant in para 4 of the Civil Application stated that they applied for certified copy on 22.12.2011, it is not

correct statement. The certified copy which is on record shows that the Applicant had applied for certified copies on 22.02.2012 and it was ready for delivery on 09.03.2012 itself but same was collected by the Applicant on 14.03.2012.

5 Bare reading of the Civil Application shows that the Applicant has failed and neglected to show any reason as to why the Applicant took near about 3 months to apply for certified copy of the impugned judgment and decree. On this count also, the application made by the Applicant for condonation of delay is liable to be dismissed.

6 The reason given by the Applicant in the Civil Application that, for filing the First Appeal they have to take decision at several level, cannot be considered as sufficient cause for condonation of inordinate delay of 409 days in filing the First Appeal.

7 Considering the submissions made by the learned counsel for the Applicant, the averments made in the Civil Application, the reasons disclosed by the

Applicant during the course of arguments and the law declared by the apex court in the matter of **Office of the Chief Post Master General & Ors. Vs. Living Media India Ltd. & Anr. 2012 ALL SCR 892** and also in the matter of **Basawaraj & Anr. Vs. The Special Land Acquisition Officer 2013 (10) SCALE 298**, I do not find any substance in the Civil Application.

8 Hence, following order is passed:

- a. The Civil Application stands rejected.
- b. Consequently, the registration of the First Appeal stands rejected.
- c. In view thereof, Civil Application for stay stands dismissed as infructuous.

(K.K.TATED, J.)