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

**CIVIL APPLICATION NO. 751 OF 2014
IN
APPEAL FROM ORDER (STAMP) NO. 15251 OF 2014**

Shri Abdul Rehman Wadgama .. Applicant
Vs.
Shahid Mirajuddin Chaghatta & Ors. .. Respondents

Mr. Ashok Y. Gade for the Applicant.
Mrs. Punita Arora a/w. Mr. Puneet Arora I/b M/s. Arora & Co. for
Respondent Nos.1 to 4.

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

P. C. :

1. Heard learned Counsel for the parties.
2. By this Civil Application, the Applicant-original Defendant No.1 seeks condonation of 486 days delay in filing Appeal from Order challenging the order dated 09.01.2013 passed by the City Civil Court, Gr. Bombay in Notice of Motion No. 1554 of 2011 in Short Cause Suit No. 1499 of 2011 granting injunction against them from creating any third party interest and/or disturbing their possession over the suit property i.e. C. T. S. No. 187, Survey No. 46, Hissa No.4 of village Saki, Taluka Kurla without following due process of law.
3. Learned Counsel appearing for the Applicant submits that the Applicant-Defendant appointed Advocate before trial Court to protect his inherent. Not only that as per directions given by Advocate, he filed Reply

dated 01.08.2011 in Notice of Motion No. 1554 of 2011. He further submits that from time to time the Applicant used to make inquiry about the progress in the matter. He submits that in the month of March, 2014, he learnt that City Civil Court passed order dated 09.01.2013 against him in Notice of Motion No. 1554 of 2011. At that time, he made inquiry with his previous Advocate. He also checked papers and proceeding. At that time, he learnt that his Advocate remained absent on several occasions. Not only that, when the matter was on board, no one appeared on behalf of him before the trial Court. Hence, the trial Court passed the impugned order dated 09.01.2013 against him. He submits that because of mistake on the part of the Advocate, the Applicant should not suffer.

4. Learned Counsel Shri Gade for the Applicant submits that the Applicant also learned that thereafter on 17.01.2013 another Advocate appeared on behalf of him in the trial Court without any Vakalatnama. He submits that they have good chance of success in the present matter. He submits that in the interest of justice, this Court be pleased to condone the delay in filing the Appeal from Order and the matter to be heard on its own merits. He submits that, if the delay is not condoned, irreparable loss would cause to him.

5. On the other hand, learned Counsel Ms. Punita Arora appearing on behalf of Respondent Nos.1 to 4 vehemently opposed the present Civil

Application. The learned Counsel for the Respondents submits that the Applicant failed to show sufficient cause for condonation of inordinate delay of 486 days in filing the Appeal from Order. Therefore, there is no question of allowing the present Civil Application.

6. Learned Counsel for the Respondents submits that in the present case, the Applicant-original Defendant No. 1 appeared before the trial Court. He filed his Reply to the Notice of Motion. But when the matter called out, no one appeared on behalf of him. Hence, the trial Court passed the impugned order. He submits that in support of the Civil Application, the Applicant has not placed on record any documentary evidence to show that his Advocate failed and neglected to take appropriate steps in the matter. She further submits that even the applicant's earlier Advocate has not filed any Affidavit in support of present Civil Application. Therefore, there is no question of allowing the present Civil Application.

7. The learned Counsel for the Respondent/original Plaintiff submits that even after passing the impugned order by the trial Court, same Advocate appeared on behalf of the Applicant without filing any Vakalatnama. She submits that this shows that, the Applicant had knowledge about the order passed by the trial Court and in spite of that, they failed and neglected to take appropriate steps to file appeal immediately.

8. Learned Counsel for the Respondent submits that in the present

proceeding, the Applicant failed to disclose the exact date when they learnt about the impugned order passed by the trial Court. She submits that in paragraph 9 of the Civil Application, the Applicant made a vague statement that they learnt about the impugned order in the month of March, 2013. She further submits that though, applicant learnt about the impugned order passed by the trial Court in the month of March, 2013, present Civil Application affirmed on 08.04.2014, but filed before this Court on 10.06.2014. There is no explanation for the delay on the part of the Applicant in filing the present Appeal from order, from the date of knowledge i.e. March, 2014. Hence, there is no substance in the present Civil Application and same to be dismissed with costs.

9. Learned Counsel for the Respondents relies on the Judgment of the Apex Court in the matter of **Balwant Singh (dead) Vs. Jagdish Singh & Ors. (2010) 8 SCC 685** in support of her contention. She submits that in this authority, there was delay of 778 days in filing the application for brining legal heirs on record. She submits that the Supreme Court has held that expression sufficient cause implies presence of legal and adequate reasons. Hence, there is no question of allowing the application for condonation of delay. She relies on paragraphs 32 and 33 of this authority which reads thus:

“32. It must be kept in mind that whenever a law is enacted by the legislature, it is intended to be enforced in its proper perspective. It is an equally settled principle of law that the provisions of a statute, including every word, have to be given full effect, keeping the

legislative intent in mind, in order to ensure that the projected object is achieved. In other words, no provisions can be treated to have been enacted purposelessly.”

“33. Furthermore, it is also a well-settled canon of interpretative jurisprudence that the Court should not give such an interpretation to the provisions which would render the provision ineffective or odious. Once the legislature has enacted the provisions of Order 22, with particular reference to Rule 9, and the provisions of the Limitation Act are applied to the entertainment of such an application, all these provisions have to be given their true and correct meaning and must be applied wherever called for. If we accept the contention of the learned counsel appearing for the applicant that the Court should take a very liberal approach and interpret these provisions (Order 22 Rule 9 CPC and Section 5 of the Limitation Act) in such a manner and so liberally, irrespective of the period of delay, it would amount to practically rendering all these provisions redundant and inoperative. Such approach or interpretation would hardly be permissible in law.”

10. Reading of the Judgment of the Apex Court in the case of **Balwant Singh** (supra) shows that if for condonation of delay, the Applicant makes any incorrect statement, then there is no question of condoning the delay. That is not a case in hand, before this Court. Hence, this authority is not applicable.

11. Learned Counsel for the Respondents also relies on the Judgment of the Apex Court in the case of **Pundlik Jalam Patil (Dead) by LRs Vs. Executive Engineer, Jalgaon Medium Project & Anr., (2008) 17 SCC 448**. She submits that the Apex Court held that if incorrect statement made in the application for condonation of delay, then the Court should not

condone the delay. In support, she relies on paragraphs 11 and 12 of the authority which read thus:

"11. Whether the respondent made incorrect statement in the application seeking condonation of delay? There is no dispute whatsoever that the respondent being the beneficiary of the acquisition has been duly impleaded as a party respondent in the reference cases as is required in law. It not only appeared in the matter through a properly instructed counsel but also filed its written statement opposing the claim for enhancement of compensation but did not choose to lead any evidence whatsoever. In the application filed in the High Court the plea taken by the respondent is as under:

"The applicant submits that, although the applicant being the acquiring body, was arrayed as the opponent in the said reference, the opponent no. 4 herein (Original Opponent No. 1) S.L.A.O. or his subordinate contested the said reference by filing written statement. Therefore, this applicant was unaware about the stand taken by S.L.A.O. as well as the impugned judgment and award."

(emphasis supplied)

This averment in the application on the face of it is totally incorrect."

"12. The Law & Judiciary Department as early as on 13.4.2000 i.e. to say within the period of 15 days from the date of the award of the Reference Court communicated its decision to acquiesce in the decision of the Reference Court and communicated the same to all the concerned including the beneficiary of the acquisition. It is not the case that the Executive Engineer did not receive the said communication. Having received the said communication, the respondent did not act in the matter and initiated any steps for filing the appeals if it was really aggrieved by the decision of the Reference Court. There is no doubt whatsoever in our mind that the respondent made totally incorrect statement in the application filed in the High Court. We express our reservation as to the

manner in which a public authority conducted itself in its anxiety to somehow get the relief from the court. In our considered opinion, incorrect statement made in the application seeking condonation of delay itself is sufficient to reject the application without any further inquiry as to whether the averments made in the application reveal sufficient cause to condone the delay. That a party taking a false stand to get rid of the bar of limitation should not be encouraged to get any premium on the falsehood on his part by condoning delay. [See: Binod Bihari Singh v. Union of India, (1993)1SCC 572].”

12. It is to be noted that bare reading of the Civil Application, in the case in hand shows that there is no question of any incorrect statement made by the Applicant on solemn affirmation. The Applicant specifically stated in paragraphs 9 and 10 that because of mistake on the part of the Advocate, the Applicant should not suffer. Admittedly, though the Advocate filed his Vakalatnama on behalf of Applicant, he remained absent in the matter when the matter called out. Therefore, this authority is also not applicable in the facts and circumstances of the present case.

13. The learned Counsel for the Respondents relies on another Judgment of the Apex Court in the matter of **Madhya Pradesh Matsya Mahasangh Vs. Sudheer Kumar & Anr., (2010) 15 SCC 179**. In this matter, there was delay of 948 days. The Apex Court held that if the applicant, for condonation of delay makes place on record misrepresentation of facts, then there is no question of allowing the application for delay. This fact is stated by the Apex Court in paragraph 16 of the Judgment which reads thus:

“16. We find that the cause shown for the delay is wholly inadequate and unsatisfactory, bordering on suppression and misrepresentation of facts to the courts, in regard to knowledge of order placing it ex parte and the subsequent ex parte decrees. We find that the High Court was justified in refusing to condone the delay of 948 days. It is, therefore, unnecessary to examine the matter with reference to the merits.”

14. It is to be noted that in case in hand, there is no question of misrepresentation on the part of the Applicant. Not only that, in case in hand, there is delay of 445 days only. Therefore, this authority is not applicable in the facts and circumstances of the case of the present case.

15. Learned Counsel for the Respondents also relies on the Judgment of the Apex Court in the matter of **B. Madhuri Goud Vs. B. Damodar Reddy (2012) 12 SCC 693**. Learned Counsel for the Respondents submits that in this matter, there was unreasonable delay of 1236 days. She submits that in this matter the certified copy of order was misplaced in the office of Advocate and therefore there was delay in filing the appeal. The Apex Court held that without any sufficient cause, there is no question of allowing the application for condonation of inordinate delay of 1236 days. In support of her contention, learned Counsel for the Respondents relies on paragraph 5 of this Judgment which reads thus:

“5. We have heard the learned counsel for the parties. The Limitation Act, 1963 has not been enacted with the object of destroying the rights of the parties but to ensure that they approach

the court for vindication of their rights without unreasonable delay. The idea underlying the concept of limitation is that every remedy should remain alive only till the expiry of the period fixed by the legislature. At the same time, the courts are empowered to condone the delay provided that sufficient cause is shown by the applicant for not availing the remedy within the prescribed period of limitation."

16. It is to be noted that in the case in hand, there is delay of 486 days and whereas in the matter of **B. Madhuri Goud** (supra) the delay was more than 1236 days. Apart from that, in the case in hand, because of mistake on the part of Advocate , there was delay. Hence this case is not applicable in the facts and circumstances of the present case.

17. I heard both the sides. It is to be noted that because of mistake on the part of the Advocate, the Applicant should not suffer.

The Apex Court in the matter of **Smt. Lachi Tewari and others Vs. Director of Land Records and others 1984 (Supp) S.C.C. 431** held that because of mistake on the part of advocate, litigant should not suffer. Para 4 reads thus :

"4. The mere narration of facts would suffice to focus attention on what point is involved in this appeal. The petitioner obtained rule nisi in 1976 and waited for 7 years for its being heard. Suddenly one day the High Court consistent with its calendar fixed the matter for hearing on April 21, 1983. The petitioner had taken extra caution to engage three learned counsels. We fail to see what more can be expected of him. Further we fail to understand what more steps should he have taken in the matter to avoid being thrown out unheard. In Rafiq v. Munshilal this Court succinctly brought out this aspect. Says the Court : (SCC p. 789, para 3)

The disturbing feature of the case is that under our

present adversary legal system where the parties generally appear through their advocates, the obligation of the parties is to select his advocate, brief him, pay the fees demanded by him and then trust the learned Advocate to do the rest of the things. The party may be a villager or may belong to a rural area and may have no knowledge of the court's procedure. After engaging a lawyer, the party may remain supremely confident that the lawyer will look after his interest. At the time of the hearing of the appeal, the personal appearance of the party is not only not required but hardly useful. Therefore, the party having done everything in his power to effectively participate in the proceedings can rest assured that he has neither to go to the High Court to inquire as to what is happening in the High Court with regard to his appeal nor is he to act as a watchdog of the advocate that the latter appears in the matter when it is listed. It is no part of his job.

Again in Goswami Krishna Murarilal Sharma v. Dhan Prakash this Court reiterated this very principle. And that squarely applies to the facts of this case. On this short ground we allow this appeal, set aside the order of the High Court dated April 21, 1983 as also the order refusing to recall the earlier order dated May 2, 1983 and restore the civil rule to the file of the High Court to be disposed of by the High Court on merits consistent with its calendar.

Considering these facts and explanation given by the Applicant in paragraphs 9, 10 and 11 of the Application, I am of the opinion that the Applicant has made out case for allowing the Civil Application. Hence, the following order:

- (i) Delay of 486 days is condoned.
- (ii) Civil Application stands disposed of accordingly.
- (iii) No order as to costs.

[K. K. TATED, J.]