

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Civil Application No. 287/2015
in
Cross objections to NO.19303/2015

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders	Court's or Judge's orders.
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Mr. Vinayak R. Kumbhar I/b. N. V. Bandiwadekar for the Applicant
Mr. Yogesh Dabake, AGP for the Respondent State

CORAM : K.K.TATED, J.
DATED : APRIL 25, 2019

P.C.

Heard. This Application is for condonation of 2 years and 289 days delay in preferring the cross objection.

2 The learned counsel for the Applicant submits that the First Appeal filed by the State has already been admitted. He submits that because of financial difficulty, it remained on the part of the Applicant to file cross objection immediately. In support of his contention, he relies on paragraph 4 of the Civil Application. He also relies on judgment in the matter of the *State of Maharashtra Vs. Kalu Ladku Mhatre*

2011 (4) Mh.L.J. 741, more particularly paragraph 6 and 7, which read thus:

"6. Thus, under Sub Rule 1 of Rule 22 of Order XLI of the said Code, a power has been conferred upon the Appellate Court to extend the time to file Cross Objection. The Appellate Court can grant such further time as it may see fit to allow. The Sub-Rule 1 of Rule 22 does not lay down that sufficient cause is required to be shown by the respondent. As the said Code vests the power to extend the time to file Cross-Objection in the Appellate Court, it is not at all necessary for the respondent in Appeal to invoke Section 5 of the Limitation Act, 1963. Section 5 of the Limitation Act reads thus:

"Extension of prescribed period of certain cases - Any appeal or any application, other than an application under any of the provisions of Order XXI of the Code of Civil Procedure, 1908, may be admitted after the prescribed period, if the appellant or the applicant satisfied the Court that he had sufficient cause for not preferring the appeal or making the application within such period."

7. The last part of Sub Rule 1 of Rule 22 of Order XLI deals with the grant of extension of time for filing of Cross Objection and Section 5 of the Limitation Act deals with the extension of time to prefer an Appeal. Section 5 of the Limitation Act incorporates a condition precedent of the appellant satisfying the Appellate Court 5 fa1323-02j that he had sufficient cause for not preferring the Appeal within the prescribed

period of limitation. Sub Rule 1 of Rule 22 of Order XLI does not incorporate the stringent requirement of establishing a sufficient cause. Thus, a wide power to extend the time to file Cross-Objection has been vested in the Appellate Court. Though there is no requirement of establishing sufficient cause within the meaning of [Section 5](#) of the Limitation Act, in the application for seeking extension of time to file Cross-Objection, brief reasons for delay will have to be set out. A wider discretion has been conferred on the Appellate Court under the Sub Rule 1 of Rule 22 than what is conferred by [Section 5](#) of the Limitation Act. The power to extend time under Sub Rule 1 of Rule 22 of Order XLI of the Code has to be liberally exercised in case where a Cross-Objection is sought to be filed before the Appeal is heard for final hearing. “

3 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 cross objection. He submits that the Applicant has good chance of success. He submits that if the delay is not condoned, irreparable loss will be caused to the Applicant. On the basis of this submission, the learned counsel for the Applicant submits that the delay in preferring the Appeal from Order may be condoned.

4 On the other hand, the learned AGP for

the Appellant State submits that there is no sufficient reason to condone the delay of more than two years in filing the cross objection. Hence, there is no substance in the Civil Application. It be dismissed with costs.

5 It is to be noted that the Applicant in paragraph 4 of the Civil Application states that because of financial difficulty, it remained on their part to file the cross objection in time. He submits that after filing the First Appeal, the Appellant deposited the amount in the Reference Court and that was withdrawn by the Applicant and thereafter they filed the present cross objection.

6 Considering the submissions made by the learned counsel for the Applicant, I am satisfied that the Applicant has made out a case for allowing the present Civil Application. At the same time, it is to be noted that in case the Applicant succeeds in the cross objection, he will not be entitled to the additional benefit on the awarded amount i.e. interest for the delayed period.

7 Hence, the following order:

a) Delay in filing the cross objection is condoned.

b) In case the Applicant succeeds in the cross objection, he will not be entitled to the benefit of interest on the awarded amount for the delayed period.

c) Civil application stands disposed off accordingly.

(K.K.TATED, J.)