

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Civil Application No.3094/2019
in
First Appeal No.109/2007

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders	Court's or Judge's orders.
Ms. Sapna Rachure for the Applicant Ms. Shital Mane for the Municipal Corporation	

CORAM: K.K.TATED, J.
DATED : SEPTEMBER 19, 2019

P.C.

1 Heard. By this Civil Application the Applicant legal heirs of the deceased sole Appellant seek permission to carry out appropriate amendment in the First Appeal for joining them as party - Appellant.

2 The learned counsel for the Applicant submits that the First Appeal was filed in the year 2007. Thereafter the sole Appellant Sadiq Mohammed Siddique died on 15.12.2014. She submits that the legal heirs of the deceased were not aware about the present proceedings. For the first time they learnt about the proceedings when their

advocate received a letter dated 03.07.2018 from the advocate for the Respondent corporation along with a copy of the Civil Application (ST) No.18833/2018. Thereafter they immediately contacted their advocate and filed the present Civil Application on 17.07.2018. She submits that for want of knowledge about the present proceedings, there is delay in filing the Civil Application for bringing the legal heirs on record of deceased sole Respondent. She submits that in the interest of justice, this Hon'ble Court be pleased to condone the delay in filing the Civil Application and the matter be heard on merits. She submits that if delay is not condoned, irreparable loss will be caused to them.

3 On the other hand the learned counsel for the Respondent Corporation has vehemently opposed the Civil Application. She submits that though the First Appeal is pending before this court since 2007, the Applicant must have knowledge about the same from the sole Appellant. In spite of that they failed and neglected to file the application in time. She submits that the

Applicant has failed to disclose sufficient cause for condonation of more than 4 years delay. Hence, there is no question of entertaining the Civil Application and same is liable to be dismissed with costs.

4 It is to be noted that the reason given by the Applicant in the Civil Application that for want of knowledge of the pendency of the First Appeal, it remained on the part of the Applicant to file the Civil Application immediately, shows sufficient cause for condonation of delay. The Applicant learnt about the pendency of the present appeal when they received letter dated 03.07.2018 from the advocate for the Respondent. This is sufficient cause for condonation of delay. Hence, I am satisfied that the Applicant has made out a case for allowing the Civil Application.

5 Hence, following order is passed:

- a. Delay in filing the Civil Application is condoned.
- b. Abatement is set aside.
- c. The Applicant to carry out appropriate amendment in the First

Appeal as per the schedule Exhibit-D to the Civil Application on or before 11.10.2019, failing which the Civil Application shall stand dismissed without further reference to the court.

d. If amendment is carried out within stipulated time as stated hereinabove, the Applicant is directed to serve the added Respondent or their Advocate along with entire proceedings, either by registered post AD and/ or by hand delivery and file an affidavit of service to that effect on or before 08.11.2019.

e. The Civil Application stands disposed of accordingly.

f. No order as to costs.

(K.K.TATED, J.)