

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.1162 OF 2018

IN

CRIMINAL APPEAL (STAMP) NO.871 OF 2018

SHIVGARH RESORTS LTD.

)...APPLICANT

V/s.

THE STATE OF MAHARASHTRA & OTHERS)...RESPONDENTS

Mr.Sahil Mahajan, Advocate for the Applicant.

Mr.H.J.Dedhia, APP for the Respondent – State.

Mr.N.K.Dayanandan Advocate for Respondent No.2.

**CORAM : INDRAJIT MAHANTY &
A. M. BADAR, JJ.**

DATE : 8th APRIL 2019

P.C. :

1 This is an application for condonation of delay in preferring the appeal challenging the order dated 1st March 2018 passed by the learned Special Judge under the Maharashtra

Protection of Interests of Depositors (in Financial Establishments) Act, 1999, (hereinafter referred to as the MPID Act for the sake of brevity) in Miscellaneous Application No.402 of 2015 in MPID Case No.18 of 2005.

2 Heard the learned counsel appearing for the applicant/accused. By drawing our attention to paragraphs 6 and 7 of the application, the learned counsel for the applicant/accused submitted that the applicant/accused was prevented by sufficient cause for not preferring the appeal within the period prescribed. He argued that the applicant/accused never received summons or notice from the MPID court and cause title of the application in which the impugned order is passed, shows incorrect address of the applicant/accused. Therefore, in his submission, short delay needs to be condoned.

3 The learned counsel for contesting respondent no.2 tendered reply affidavit and the same is taken on record. By relying on this reply affidavit, the learned counsel appearing for

the respondent no.2 opposed the application by contending that, infact, the service affidavit was filed before the learned MPID court and despite service, the applicant/accused herein remained absent, and as such, impugned order came to be passed.

4 We have considered the submissions so advanced. The delay in filing the appeal is of about 33 days. The same is sufficiently explained in paragraphs 6 and 7 of the instant application, which is on affidavit. Nothing is pointed out to show that the applicant herein was duly served before the MPID court. From the order sheet of the said court, copy of which is filed with the reply affidavit, we are unable to hold that the contesting respondent no.2 has demonstrated that the applicant/accused was, infact, duly served prior to passing the impugned orde. The applicant/accused has come up with a case that even his address shown in the cause title of the application, in which the impugned order was passed, is incorrect. Nothing is produced on record to demonstrate that the said address is correct and the applicant/accused herein was duly served. Even otherwise, it is

primary function of the court to adjudicate the disputes on its own merit rather than adhering to technicalities of law.

As sufficient cause is shown for the delay occasioned in filing the appeal, the delay is condoned.

The application is, accordingly, disposed off.

(A. M. BADAR, J.)

(INDRAJIT MAHANTY, J.)