

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

**CIVIL APPLICATION NO. 2609 OF 2017
WITH
CIVIL APPLICATION NO. 2610 OF 2017
IN
FIRST APPEAL STAMP NO. 22912 OF 2017**

The Municipal Corporation of Gr. Mumbai Applicant

V/s.

Shivaji Shamu Waghralkar Respondent

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Ms. Sheetal Mane for the MCGM.

Mr. Harish Pawar for the Respondent.

CORAM : K.K.TATED, J.

DATED : 9th September, 2019

P.C.

1. Heard learned counsel for the parties.
2. By this Civil Application, the Applicant is seeking condonation of 2 years and 205 days delay in filing the First Appeal challenging the judgment and decree dated 17th October, 2014 passed by the Bombay City Civil Court, Bombay in L.C. Suit No. 1194 of 2011.
3. The Learned Counsel for applicant submit that before filing the First Appeal they have to take approval from several department. She submits that in the present proceedings earlier they filed application for certified copies on 28th January, 2015

and same was received on 21st February, 2015. Thereafter the same was forwarded to the concerned officer. She submit that, the concerned officer failed and neglected to provide any instructions for filing the First Appeal. She submit that in the mean while they started prosecution against the respondent/original plaintiff under MRTP Act. When the police authority approached the Assistant Commissioner 'D' Ward, at that time they learned that it remained on their part to challenge the judgment and decree passed by the Trial Court.

4. The Learned Counsel for applicant submits that, in mean while they lost the certified copy of impugned judgment and decree. Hence immediately they applied for another certified copies on 1st June, 2017 and same was received on 16th June, 2017. Thereafter they filed the present First Appeal before this Court on 24th July, 2017. In support of his contention the learned counsel for applicant relies on para no. 4,5,6,7,8 & 9 of additional affidavit dated 27th September, 2017 which read thus :

“4. I say that the Trial Court passed the order dated 17.10.2014 there by decreeing L.C. Suit No., 1194 of 2011. It seen from the Record that on 10.10.2014 both the parties argued the matter and thereafter time to time the matter was adjourned for order and the order was passed on 17.10.2014.”

“5. I say that on 10.10.2014 when the matter was argued the date was given on 14.10.2014 for order. However, on 14.10.2014 the order was not passed and further date was not given. Thereafter after following the status of the matter it was observed that on 17.10.2014 the order was passed on the said judgemnt and the applicant was not aware about the said order passed on 17.10.2014.”

“6. I say that the application for certified copy was first made on 28.1.2015 and the same was received on 21.2.2015. I say that the said copy of order alongwith intimation was intimated by the concerned Adv. Of the Ward to the AEBF (B&F) D’ Ward. The Copy of the said intimation is sent herewith as Annexure ‘A’. I say that no instructions were received for filing appeal from Building and Factory Department and since the concerned officer was transferred from the said ward.”

“7. I say that in the aforesaid suit structure the prosecution was launched with police under MRTP Act and the said police authorities has approached Asstt. Commissioner D’ Ward when first time it was learnt about the aforesaid matter. I say that after diligent search it was found that the said decree order was not challenged since the concerned department had not informed about the filing of the First Appeal for challenging the decree order. I say that the concerned officer was also transferred from the said department and hence no instructions regarding the filing of appeal was received by the Legal Department.”

“8. I say that thereafter this department received intimation from AEBF D’ Ward on 6.6.2017 for filing First Appeal. I say that the earlier certified copy which was obtained 21.2.2015 was not traceable even after diligent search. Hence the department again applied for certified copy which was ready on 15.6.2017 and received 16.6.2017. I say that it was not the intentional delay for filing First Appeal.”

“9. I say that during the span of November 2014 when the order was passed in January 2015 when the certified copy was received there were two vacation Diwali and Christmas of the Hon’ble Court proceeded and therefore certified was not received.”

5. The learned counsel for the applicant submit that they have a good chance of success in the present matter. She submit that in the interest of justice this Hon’ble Court be pleased to condone the delay and matter to be heard on its own merits. She submit that if delay is not condone irreparable loss will caused to the applicant.

6. On the other hand, the learned counsel Mr. Harish Pawar appearing on behalf of Respondent / Original Plaintiff vehemently opposed the present Civil Application. He submit that there is no sufficient explanation for in-ordinance delay of 2 years and 205 days in filing First Appeal. Hence, there is no substance in the

present Civil application and same is required to dismissed with costs.

7. I heard both the sides at length, it is to be noted that, in the present proceeding though the impugned judgment and decree passed by trial court on 17th October, 2014, applicant filed the present proceedings before this court on 24th July, 2017. The reason given by the applicant in application is not satisfactory. It is to be noted that though the papers were forwarded in 'D' Ward, the concerned officer failed and neglected to take immediate steps for filing the First Appeal before this court. Apart from that the certified copy obtained by the applicant on 21st February, 2015 also misplaced by them.

8. Earlier the matter was on board before this court. At that time, at the request of advocate for applicant, the matter was adjourned for some time to file additional affidavit in support of Civil Application explaining whether the corporation is taking any action against the concerned officer. In additional affidavit dated 27th September, 2017 the applicant failed to disclose any material, whether the applicant has taken any action against the concerned officer.

9. Considering these facts, I am of the opinion that because of negligence on the part of applicant, respondent should not

suffered. Applicant failed to show any cause for condonation of delay. In view of this fact I do not find any substance in the present Civil Application.

10. Hence, following order :-

ORDER

- a) Civil Application for condonation of delay stands dismissed.
- b) First Appeal Stamp No. 22912 of 2017 stands dismissed.
- c) Civil Application No. 2610 of 2017 for stayed also dismissed, in view of dismissal of civil Application for condonation of delay.
- d) No order as to costs.

(K.K.TATED, J.)