

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

**CIVIL APPLICATION NO.785 OF 2018
IN
APPEAL FROM ORDER NO.541 OF 2018
WITH
CIVIL APPLICATION NO.131 OF 2019**

Municipal Corporation of Greater Mumbai .. Applicant

VS.

Sunil Rajaram Zode and Ors. .. Respondents

Ms. Madhuri More for the applicant

Mr.R.A.Thorat, Sr.Counsel i/b Mr.S.P.Chavan h/f Mr.D.R.Prasad
Singh for the respondent no.1

Ms.Anjali Helekar i/b Ms.Geeta Mulekar for the respondent no.2

**CORAM : K. K. TATED, J
DATE : APRIL 25, 2019**

P.C.:

. Heard.

2 By this Civil Application, Applicant Municipal Corporation is seeking condonation of 166 days delay in filing Appeal from Order challenging the order dated 23.1.2017 passed by Bombay

City Civil Court at Bombay in Notice of Motion No.2191 of 2016 in L.C.Suit No.1879 of 2016.

3 The learned counsel for the Applicant submits that they immediately filed Application for certified copies on 27.6.2018 and same was ready for delivery on 29.6.2018 and they collected the same. Thereafter, they filed the present Appeal before this court on 24.7.2018.

4 The learned counsel for the Applicant submits that there is a delay on their part to file the Appeal before this court because of pressure of work. In support of this contention, the learned counsel for the Applicant relies on paragraph 8 of the Civil Application which reads thus:

"8. The Applicants submit that the delay caused is due to the fact that the concerned department / officer is overburdened with the constant flow of the office work and has to be taken action on dilapidated buildings and attend TAC meeting, GRC meetings, inspections and action on unauthorized construction and also to attend various complaints on Aaple Sarkar, PMOPG online complaints etc. and also to attend the various meetings and complainants from the ward and demolition programme etc. and also the concerned Designated Officer has been

changed number of times. It also requires the sanction of various Higher Authorities which takes time. Hence, this Hon'ble Court is requested to condone the delay in filing the appeal which is unintentional."

5 The learned counsel for the Applicant submits that they have good chance of success in the present matter. He submits that in the interest of Justice, this Hon'ble Court be pleased to condone the delay in filing Appeal from Order and matter be heard on its own merits. She submits that if Application is not allowed, irreparable loss will be caused to them.

6 On the other hand, the learned Senior counsel for Respondent no.1 vehemently opposed the present Civil Application. They filed their Affidavit-in-Reply dated 18.2.2019 to oppose the Civil Application. The learned Senior Counsel for the Respondent no.1 submits that present Civil Application is liable to be dismissed on the ground that Applicant has made incorrect statement in paragraph 10 of the Civil Application. He submits that there is a delay of more than 18 months in filing Appeal from Order and inspite of that Applicant has stated in their Application that there is a delay of only 166 days in filing Appeal.

7 The learned Senior counsel for the Respondent submits that there is no explanation why they took more than 15 months to apply for certified copies of impugned order. He submits that

explanation given by the Applicant in paragraph 8 of the Civil Application does not show sufficient cause for condonation of delay. In support of this contention, the learned Senior Counsel for the Respondent no.1 relies on judgment of the Apex Court in the matter of Mani Devraj Shah vs. Municipal Corporation of Brihan Mumbai¹. He mainly relies on paragraph 18, 21 and 22 of the said order.

"18. What needs to be emphasised is that even though a liberal and justice oriented approach is required to be adopted in the exercise of power under Section 5 of the Limitation Act and other similar statutes, the Courts can neither become oblivious of the fact that the successful litigant has acquired certain rights on the basis of the judgment under challenge and a lot of time is consumed at various stages of litigation apart from the cost. What colour the expression 'sufficient cause' would get in the factual matrix of a given case would largely depend on bona fide nature of the explanation. If the Court finds that there has been no negligence on the part of the applicant and the cause shown for the delay does not lack bona fides, then it may condone the delay. If, on the other hand, the explanation given by the applicant is found to be concocted or he is thoroughly negligent in prosecuting his cause, then it would be a legitimate exercise of discretion not to condone the delay.

1 AIR 2012 SC 1629

In cases involving the State and its agencies/instrumentalities, the Court can take note of the fact that sufficient time is taken in the decision making process but no premium can be given for total lethargy or utter negligence on the part of the officers of the State and / or its agencies/instrumentalities and the applications filed by them for condonation of delay cannot be allowed as a matter of course by accepting the plea that dismissal of the matter on the ground of bar of limitation will cause injury to the public interest.

21. The applications filed for condonation of delay and the affidavits of Shri Sirsikar are conspicuously silent on the following important points:

(a) The name of the person who was having custody of the record has not been disclosed.

(b) The date, month and year when the papers required for filing the first appeals are said to have been misplaced have not been disclosed.

(c) The date on which the papers were traced out or recovered and name of the person who found the same have not been disclosed.

(d) No explanation whatsoever has been given as to why the applications for certified copies of the

judgments of the trial Court were not filed till 23.8.2010 despite the fact that Shri Sirsikar had given intimation on 12.5.2003 about the judgments of the trial Court.

(e) Even though the Corporation has engaged battery of lawyers to conduct cases on its behalf, nothing has been said as to how the transfer of Shri Ranindra Y. Sirsikar operated as an impediment in the making of applications for certified copies of the judgments sought to be appealed against.

22. Unfortunately, the learned Single Judge of the High Court altogether ignored the gapping holes in the story concocted by the Corporation about misplacement of the papers and total absence of any explanation as to why nobody even bothered to file applications for issue of certified copies of judgment for more than 7 years. In our considered view, the cause shown by the Corporation for delayed filing of the appeals was, to say the least, wholly unsatisfactory and the reasons assigned by the learned Single Judge for condoning more than 7 years delay cannot but be treated as poor apology for the exercise of discretion by the Court under Section 5 of the Limitation Act."

8 On the basis of these submissions, the learned Senior Counsel for the Respondent submits that there is no substance in

the present Civil Application and same be dismissed with costs.

9 Heard the learned counsel for the parties.

10 Bare reading of the Civil Application shows that same is filed in a casual manner. It is to be noted that though impugned order was passed on 23.01.2017, Applicant filed Application for certified copies on 27.6.2018. There is no explanation in the entire Civil Application why they took more than 15 months for applying for certified copy. Not only that, the reason given by the applicant in paragraph 8 is also not sufficient. It is not explained by them which Advocate and or Officer was busy in other work. Not only that, no where it is stated in the entire application, how many matters were pending with the concerned Advocate who was supposed to draft the present Appeal from Order.

11 Considering these facts, I do not find any substance in the present Civil Application. Hence, following order:

- a. Civil Application stands dismissed with costs of Rs.5,000/-.
- b. Cost to be deposited in the Kirtikar Law Library, High Court, Bombay on or before 29.06.2019.
- c. If cost is not deposited within stipulated time, as stated hereinabove, Registry is directed to send copy of this order to the Collector to recover the same as arrears of Land Revenue.
- d. In view thereof, nothing survives in the Appeal from Order

No.541 of 2018 and Civil Application No.131 of 2019 for stay.

e. Hence, same stand dismissed as infructuous.

(K.K.TATED, J.)