

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO. 3829 OF 2015
WITH
FIRST APPEAL (ST) NO. 25985 OF 2015

The Municipal Corporation of
Greater Bombay ... Applicant

V/s.

Vijay P. Tiwari ... Respondent

Mr. Rajiv Chavan, Senior Counsel a/w Ms. Sheetal Mane for the
Applicant/MCGM.

CORAM: K.K.TATED, J.
DATED : 27/09/2019

P.C.

1 Not on board. At the request of the learned Senior Counsel
for the Applicant, matter is taken on board for urgent order.

2 Heard learned Senior Counsel for the Applicant.

3 Though, the Respondent is duly served, no one appeared
on behalf of him, when the matter called out.

4 By this Civil Application, Applicant Corporation is seeking
condonation of 5 years delay in filing First Appeal challenging the
judgment and decree dated 16.08.2010 passed by the Bombay
City Civil Court at Bombay in L.C. Suit No. 4161 of 1999
preventing the Applicant from taking any action on the basis of
notice under Section 351 of the MMC Act dated 25.06.1999 in

respect of stall admeasuring 10' x 8' x 8" situated in the compound of Dadbhawala Sadan, Plot No. 584, Shankar Matham Road, Matunga, Mumbai – 400 019 and order dated 08.07.1999. The Trial Court also declared that notice dated 25.06.1999 and order dated 08.07.1999 passed by the DMC/Applicant are illegal and void. The Trial Court restrained the Applicant from demolishing the suit structure.

5 The learned Senior Counsel for the Applicant submits that it is a practice and procedure of legal department of Applicant/Corporation that the Concerned Advocate who conducted the matter before the Trial Court, will after disposal of the matter intimate to the concerned ward officer about the order/judgment passed by the Court. He further seeks instructions as to whether an appeal is to be preferred or not. On receipt of the instructions from the ward officer, the concerned Advocate who handled the matter before the Trial Court ought to forward the papers to the Appellate side section of the legal department of the Corporation for drafting and filing an Appeal. He further submits that it remained on the part of the concerned Advocate to take appropriate steps immediately. Not only that, he submits that even it remained on part of concerned officer to take action immediately for filing the First Appeal before this Court. He further submits that during that period, there was shifting of legal department from one place to other place. He submits that in that shifting the papers were misplaced and therefore, it remained on their part to file the first appeal immediately. He submits that the Municipal Commissioner and Assistant Commissioner of F/North ward received a letter dated

09.04.2015 from Dadbhawala Co-operative Housing Society Ltd., making inquiry why the corporation had not filed Appeal against the impugned judgment and decree by which the Trial Court restrained the Corporation from taking any action in respect of the unauthorised constructions. At that time, they learnt that it remained on their part to file First Appeal immediately. Therefore, the Municipal Commissioner made an inquiry and called the explanation from the concerned ward officer and directed him to take appropriate steps immediately for filing the First Appeal before this Court.

6 The learned Senior Counsel for the Applicant submits that because of pressure of work in the law department of the Applicant, it remained on their part to keep track of this matter for filing First Appeal. He submits 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. He further submits that if delay is condoned, same is not going to affect the rights of Respondent original Plaintiff in any case.

7 In support of his contentions, the learned Senior Counsel for the Applicant relies on paragraphs Nos. 7 to 11, which read thus:

“7. Applicants state that the abovesaid five suits including the present suit No.4161 of 1999 were finally heard and disposed of by judgment and decree dated 13-08-2010 & 16-08-2010 respectively. Applicants state that it is practice and procedure of the legal department of the Applicants that the concerned Advocate, who conducted the matter before the Trial Court will after

disposal of the matter intimate to the concerned ward about the order/judgment passed by the Hon'ble Court in the matter and seek further instructions as to whether an appeal is to preferred or not. On receipt of the instructions from the ward the concerned Advocate, who had handled the matter before the Trial Court will thereafter forward all the papers of the matter to the Appellate side section of the legal department of the Applicants for drafting and filing an Appeal. Applicants state that however with effect from 2008, the practice was adopted by the legal department by which the concerned Advocate, who had conducted the matter before Trial Court will, after receipt of the instructions from the ward office to prefer the Appeal, draft the Appeal Memo setting out the grounds of Appeal and draft the Civil Application wherever necessary and thereafter forward the entire bunch of papers/brief to the Appellate Side Section of the Legal Department for filing. The necessary paper work required for filing of the Appeal such as typing of the proceedings will also have to be got done by the typists attached to the Legal Department through the Managing Clerk of the respective ward.

8. Applicant's state that in the present matter the concerned Advocate, who attended and conducted the matter before the Trial Court had, after the impugned judgment was delivered by the Court, intimated to the concerned ward and had sought instructions in the month of August, 2010. On receipt of the instructions from the ward to prefer the Appeal, the concerned Advocate drafter the Appeal Memo, Civil Application for conduction of delay, synopsis immediately and had handed over the papers to assigned Managing Clerk/Clerk looking after the work of F/North Ward.

9. Applicants state and submit that due to departmental decentralisation of City Civil section of the Applicants legal department since year 2011 and re-shuffling of Advocates to the Ward office of the assigned ward, all the papers and proceedings of the relevant suits, which were pending in the Hon'ble City Civil Court were segregated and dispatched to the respective ward offices

as the concerned Advocates of the respective wards were attached to the ward office and were required to amend the Courts from the ward office itself. All the disclosed matters of the City Civil Court Section were thereafter sent to the Municipal Godown, Kandivali for record.

10. *Applicants state that there was also departmental transfer of the clerks in the legal department due to which several Clerks were transferred out of the legal department and certain new clerks were assigned to work in the legal department. Applicants further say and submit that in this entire goings on, the track of the proposed Appeals to be filed in the matters were lost.*

11. *Applicants state that by a letter dated 09-04-2015 one Dadbhawala Co-operative Housing Society Ltd. wrote to the Municipal Commissioner and the Assistant Commissioner of the F/North Ward interalia complaining about the unauthorised structures in their compound and also pointing out that only one appeal had been filed against the judgment and decree of the Hon'ble City Civil Court and sought explanation as to why in the other matters appeals were not filed. Applicants state that the Additional Municipal Commissioner (City) on receipt of the abovesaid letter called for explanation and report from the concerned ward office. Applicants further state that thereafter the Assistant Commissioner and the concerned ward office staff of legal section in the Ward Office, after making diligent search in the ward office gave a report that the case papers/papers and proceedings of the subject suit are not traceable in the ward office. Applicants state that on making enquiries it is revealed that the Appeals had not been filed as the entire set of papers pertaining to the matters had gone missing. It was also revealed that due to the bifurcation, transfer and scuffling of the legal department/Advocates and staff, the papers and proceedings of the drafted Appeal Memo were untraceable and therefore, the First Appeals could not be filed within time."*

8 The learned Senior Counsel for the Applicant submits that in the interest of justice, this Hon'ble Court be pleased to condone the delay. He submits that if delay is not condoned, irreparable loss will be caused to the Applicant because the Respondent carried out the unauthorised constructions.

9 It is to be noted that in the present proceeding, the impugned Judgment and Decree passed by the Trial Court on 16.08.2010, thereafter they applied for certified copy on 15.07.2015 and same was delivered to them on 23.07.2015. The present First Appeal and Civil Application filed by them on 25.08.2015. Bare reading of the Civil Application shows that there is no explanation why the Applicant took more than 5 years in applying certified copy. The certified copy was itself applied by the Applicant after 5 years. On this ground also the Civil Application is required to be dismissed.

10 The reasons given by the Applicant in Civil Application that the papers were missing and it remained on part of concerned officer to take immediate steps for filing First Appeal do not show sufficient cause. In entire Civil Application, the Applicant failed to disclose the name of the concerned officer and Advocate who failed to take steps for filing First Appeal. Not only that, though the letters written by the Co-operative society to the Commissioner and Assistant Commissioner, F/North Ward, for challenging the order in High Court, nothing is stated in the Civil Application, what actions have taken against the concerned ward officer. This itself shows that Applicant filed the Civil Application in casual manner.

11 Movement of the file from one Department to other Department, cannot be a good ground for condonation of inordinate delay. It is to be noted that this court in the matter of **Special Land Acquisition Officer & Anr. Vs. Jose Prazeres de Piedade Pinto 2006(2) BCR 773** held that the delay caused because of movement of file from one table to another cannot be considered as a good ground for delay. Para 12 of the said judgment reads thus:

12. The delay merely because it has occasioned in a matter relating to land acquisition case involving public money, condonation thereof cannot be construed as a matter of right to the Government. In case of delay, it is necessary for the Government machinery to furnish the necessary satisfactory explanation for such delay. In case the delay has occurred on account of either willful acts on the part of the concerned officer/ s or for any other reason, which could even defeat the rights of the Government or the acquiring body in relation to the provision for appeal against the award passed by the Reference Court, the mere statements regarding the movement of the file from one office to the other office, from one table to the other table cannot be construed as satisfactory explanation for the delay in filing the appeal. In the case in hand, as already observed above, merely stating that the file moved from one office to another, either for opinion or for preparation of financial report, no explanation has been placed on record as to why it took particular number of days for obtaining either the opinion of the Law Department or for preparing the financial implication report by the Executive Engineer. It apparently discloses total failure on the part of the applicants in explaining the cause for the delay of 281 days in filing the appeal as well as 51 days' delay in filing the application for condonation of delay.

12 The apex court in the matter of **Office of the Chief Post Master General & Ors. Vs. Living Media India Ltd. & Anr.**

2012 ALL SCR 892 held that the delay attributable to impersonal machinery and bureaucratic methodology cannot be a ground for condonation of delay. Para 13 of the said judgment reads thus:

“13. In our view, it is the right time to inform all the government bodies, their agencies and instrumentalities that unless they have reasonable and acceptable explanation for the delay and there was bona fide effort, there is no need to accept the usual explanation that the file was kept pending for several months/years due to considerable degree of procedural red-tape in the process. The government departments are under a special obligation to ensure that they perform their duties with diligence and commitment. Condonation of delay is an exception and should not be used as an anticipated benefit for government departments. The law shelters everyone under the same light and should not be swirled for the benefit of a few. Considering the fact that there was no proper explanation offered by the Department for the delay except mentioning of various dates, according to us, the Department has miserably failed to give any acceptable and cogent reasons sufficient to condone such a huge delay. Accordingly, the appeals are liable to be dismissed on the ground of delay.”

13 Considering this fact, following order is passed:

- a) Civil Application stands dismissed.
- b) Registration of First Appeal stands rejected.
- c) No order as to costs.

(K.K.TATED, J.)