

Amk

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

**CIVIL APPLICATION NO. 77 OF 2017
IN
CONTEMPT PETITION (STAMP) NO. 26157 OF 2017**

Om Shivam Co-op. Housing Society Ltd. .. Applicant
Vs.
Harjeet Singh Gandhi & Anr. .. Respondents

Mr. J. N. Jain for the Applicant.
Mrs. Anita Patil I/b S. J. Ghogare for Respondent No.1.

CORAM : K. K. TATED, J.
DATE : 3rd APRIL, 2019.

P. C. :

1. Heard learned Counsel for the parties.
2. By this Civil Application, the Applicant is seeking condonation of 164 days delay in filing the Contempt Petition.
3. It is the case of the Petitioner that the Respondents violated the Judgment and decree dated 30.01.2016 passed by Bombay City Civil Court, Bombay in L. C. Suit No. 3430 of 2004.
4. Learned Counsel for the Applicant submits that the Court can condone the delay in filing the Contempt Petition. In support of his contention, he relies on Judgment of this Court in the matter of **Harshwardhan Bandivadekar Vs. Taramati Harishchandra Ghanekar & Ors., MANU/MH/1339/2008**. He relies on paragraph 21 of this Judgment which reads thus:

"21. In the instant case, the facts and circumstances set out

hereinabove, makes it abundantly clear that there is a continuing wrong, in the sense, that the appellant's non-compliance of the undertaking and the appellant himself further took out a Notice of Motion on 7th December, 2006 for extension of time to comply with the earlier undertaking and again giving a further undertaking to this Court on 9th March, 2007, to fulfill the earlier undertaking and also furnishing a bank guarantee of Rs.1/- Crore to comply with the same, clearly indicates that there is no need to condone the delay as the appellant himself accepted it as a continuing wrong, in the facts and circumstances as set out hereinabove."

5. On the basis of this fact, learned Counsel for the Applicant submits that Section 5 of the Limitation Act is applicable to the Contempt of Courts Act and hence the delay may be condoned in the interest of justice and matter to be heard on its own merits.

6. It is to be noted that, the Apex Court in the matter of **Om Prakash Jaiswal Vs. D. K. Mittal & Anr. (2000) 3 SCC 171** held that Section 5 of the Limitation Act does not applicable in filing of Contempt Petition under the Contempt of Courts Act, 1971. Paragraph 15 of this authority reads thus:

"15. In the cases contemplated by (i) or (ii) above, it cannot be said that any proceedings for contempt have been initiated. Filing of an application or petition for initiating proceedings for contempt or a mere receipt of such reference by the court does not amount to initiation of the proceedings by court. On receiving any such document it is usual with the courts to commence some proceedings by employing an expression such as "admit", "rule", "issue notice" or

“issue notice to show cause why proceedings for contempt be not initiated”. In all such cases the notice is issued either in routine or because the court has not yet felt satisfied that a case for initiating any proceedings for contempt has been made out and therefore the court calls upon the opposite party to admit or deny the allegations made or to collect more facts so as to satisfy itself if a case for initiating proceedings for contempt was made out. Such a notice is certainly anterior to initiation. The tenor of the notice is itself suggestive of the fact that in spite of having applied its mind to the allegations and the material placed before it the court was not satisfied of the need for initiating proceedings for contempt; it was still desirous of ascertaining facts or collecting further material whereon to formulate such opinion. It is only when the court has formed an opinion that a prima facie case for initiating proceedings for contempt is made out and that the respondents or the alleged contemnors should be called upon to show cause why they should not be punished; then the court can be said to have initiated proceedings for contempt. It is the result of a conscious application of the mind of the court to the facts and the material before it. Such initiation of proceedings for contempt based on application of mind by the court to the facts of the case and the material before it must take place within a period of one year from the date on which the contempt is alleged to have been committed failing which the jurisdiction to initiate any proceedings for contempt is lost. The heading of Section 20 is “limitation for actions for contempt”. Strictly speaking, this section does not provide limitation in the sense in which the term is understood in the Limitation Act. Section 5 of the Limitation Act also does not, therefore, apply. Section 20 strikes at the jurisdiction of the court to initiate any proceedings for contempt.”

7. Considering the submission made by learned Counsel for the Applicant and the law laid down by the Apex Court in the matter of **Om**

Prakash Jaiswal (supra), I am of the opinion that the Civil Application as it is filed by the Applicant is not maintainable. Section 5 of the Limitation Act is not applicable for filing Petition arising out of Contempt of Courts Act, 1971.

8. Hence, the Civil Application is rejected.

9. No order as to costs.

10. In view of dismissal of Civil Application for condonation of delay, registration of Contempt Petition stands cancelled.

[K. K. TATED, J.]