

Urmila Ingale

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION STAMP NO. 28050 OF 2018

Food Corporation of India and anr. .. Petitioners
Vs.
Mr.Prakash Hemraj Hiran .. Respondent

Mr.Hafeezur Rehman, for the Petitioners.
Mr. Amol Wagh i/b Mr.Sagar Kasar, for the Respondent.

CORAM : M.S.KARNIK, J.
DATE : 04th SEPTEMBER 2019

P.C. :

. Heard learned Counsel for the petitioners.

2. The petitioner is Food Corporation of India. The challenge in this Petition is to an order dated 20/04/2018 passed by the First Appellate Court dismissing the Civil Misc. Application No. 52 of 2017 filed below Exhibit 12 for condoning the delay of more than 15 months in filing the review petition.

3. The petitioner is the original defendant. The respondent filed the Suit for recovery of money on account of some transportation charges which were due and payable by the

defendant. The defendant filed counter claim contending that the plaintiff failed to supply warners with the wareferi trucks which caused damage to the goods therefore defendant claimed an amount of Rs.72417=11 as and by way of counter claim. The trial Court by judgment and decree dated 27/02/2009 dismissed the Suit as well as counter claim.

4. In Appeal, First Appellate Court partly allowed the plaintiff's appeal partly by directing the defendant to pay an amount of Rs.1,12,263/- to appellant with interest. It is the contention of the learned Counsel for the petitioner that though the Appellate Court decided the Appeal filed by the plaintiff, however, so far as cross appeal filed by the defendant is concerned, the First Appellate Court did not deal with the same. Therefore, Civil Misc. Application No. 52 of 2017 was filed for review of the judgment and decree of the Appellate Court in which there was delay of 15 months. Learned Counsel for the petitioner invited my attention to the application filed for condonation of delay which is at page 37 of the paper-book. In

the application it has been stated in paragraphs 3 and 4 that the officer concerned in the legal department did not inform the office-in-charge of the area and later on he was transferred to some other department. After the concerned officer got knowledge of the judgment and decree and noticing that there was error apparent on the face of the record, the application was filed which resulted in delay. The Appellate Court rejected the application for condonation of delay by impugned order dated 20/04/2011.

5. Learned Counsel for the respondent opposes the Petition and supported the order passed by the Appellate Court. According to him, the delay has not been explained satisfactorily and the Appellate Court is justified in rejecting the application.

6. I have gone through the application filed on behalf of the petitioner indicating the reason why there is delay in filing the review petition. It is one of the contention of the petitioner that the cross appeal filed by defendant was not

decided when the plaintiff's appeal was decided by the Appellate Court. It is in these circumstances, review is sought. The reasons have been mentioned in the application as to why the review petition could not be filed within the statutory period.

7. In this view of the matter, for the reasons mentioned in the application, the delay needs to be condoned in the interest of justice subject to imposing cost on the petitioner. The present Petition is therefore allowed subject to petitioner paying cost of Rs.20,000/- to the original plaintiff. Cost to be paid within 3 weeks from today.

8. Civil Misc. Application No. 52 of 2017 filed below Exhibit 12 is allowed. Impugned order is set aside.

9. The Appellate Court to hear the review petition on its own merits and in accordance with law.

(M.S.KARNIK, J.)