

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

**CIVIL APPLICATION NO.584 OF 2016
IN
FIRST APPEAL NO.2004 OF 2005**

Brihanmumbai Municipal Corporation .. Applicant/Appellant
Vs.
Abhilasha Co-operative Housing
Society Ltd. .. Respondent

Mr.N.V. Walawalkar, Senior Advocate a/w Mrs.Shital Mane Tadke i/by
Mr.U.H.Deshpande for the applicant/appellant - MCGM.
Ms.Varsha Chavan for the respondent no.1.

**CORAM : R.D.DHANUKA, J.
DATE : 14th November 2019**

P.C.:

. By this civil application, the applicant seeks condonation of delay of 9 years in filing the first appeal, seeks recall of the order dated 28th March 2006 passed by this Court thereby dismissing the said appeal for non compliance of the conditional order of filing private paper book within one year from the date of the said order.

2. Mr.Walawalkar, learned counsel for the applicant invited my attention to the judgment of the Supreme Court in the case of Kalipada Das @ Mahanto & Ors. reported in (1983) 1 SCC 14 and in particular paragraph 5 in support of the submission that the appellant having good chances of succeeding in appeal on merit. The application for restoration

of appeal which was dismissed for non compliance of the conditional order for not filing private paper book shall be allowed.

3. In paragraph 5 of the said judgment of the Supreme Court, it is held that filing of paper book is a procedural step in aid of justice and not substantive justice itself. If the penalty imposed is disproportionate to the gravity of the lapse or omission, the procedural stage instead of becoming a step in aid of justice would be a roadblock to justice. In my view, the principles of law laid down by the Hon'ble Supreme Court in the said judgment would apply to the facts of this case. Even though there is delay in filing private paper book which is in the nature of procedural step, the Court shall take a lenient view if the delay in filing private paper book is explained. In the civil application, the applicant has made an attempt to explain the delay of 9 years in filing private paper book.

4. The reasons recorded in the civil application are not fully satisfactory however, in the interest of justice and on payment of costs, the following order is passed :-

- (i) Delay of 9 years in filing the first appeal is condoned.
- (ii) The conditional order dated 28th March 2006 passed by this Court is restored to file on the condition that the applicant shall file private paper book within two weeks from today with a copy to be served upon

the respondent's advocate simultaneously on payment of cost of Rs.25,000/- which shall be paid to the respondent within four weeks from today. It is however, made clear that cheque in respect of payment of cost can be handed over to the learned advocate appearing for the respondent.

(iii) Civil application is disposed of on aforesaid terms.

R.D.DHANUKA, J.