

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE CIVIL JURISDICTION
CIVIL APPLICATION NO.104 OF 2018
in
APPEAL FROM ORDER (St) NO. 5723 of 2017**

Baban P.Ghule & ors .. Applicants
vs
M/s Nanded City Development & Cons Co Ltd & ors..Respondents

Mr.Amey Borwankar for Applicants
Mr.Akshay Kendvakar I.b Ms.Gauri Godse for Respondent no.1

**CORAM : K.K.TATED , J
DATE : 9th April, 2019**

P.C

Heard learned counsel for the parties.

2. By this Civil Application, the Applicant is seeking restoration of Appeal from Order (Stamp) No.5723 of 2017 which stood dismissed in view of the conditional order dated 6.9.2017 passed by the learned Registrar (Judicial-II) for non-removal of office objections.

3. Learned counsel for the Applicant submits that due to illness of his clerk, it remained on their part to remove all office objections. In support he relies on para 3 of the Civil application which reads thus :

“ It is submitted that there minor objections such as 'Advocate has not signed on each page' and undertaking in respect of translation was not given.” It is submitted that due to prolonged illness of the clerk of the Advocate the matter went unattended and hence was consequently dismissed for non-removal of office objections “ (Hereto annexed and marked as Exhibit A is a copy of the order dated 6.9.2017.”

4. Learned counsel for the applicant submits that this Hon'ble Court be pleased to condone the delay in filing the Civil Application and restore the Appeal from Order on file. He submits that the applicant undertake to remove all office objections on or before 2.5.2019.

5. On the other hand, learned counsel appearing for the respondents vehemently opposed the present Civil Application. He submits that there is a delay of 60 days in filing the Civil Application. There is no sufficient cause shown by the Applicant for condonation of the said delay. Hence, there is no substance in the Civil Application and the same be dismissed with costs.

6. I have heard learned counsel for the parties.

7. It is to be noted that it remained on the part of advocate to remove all office objections as the clerk was not keeping well. Considering the same, the Civil Application can be allowed but, they have to pay costs of Rs.5000/-.

8. It is to be noted that the present Appeal from Order appeared before the learned Registrar for removal of office objections on 13.6.2017, 12.7.2017 and thereafter on 6.9.2017 when no one appeared on behalf of the applicant, the learned Registrar (Judicial-II) dismissed the same. Hence, costs is imposed on the applicant.

9. Considering the submissions made by the learned counsel for

the applicant, and averments made in the Civil Application, the Applicant undertakes to remove all office objections on or before 2.5.2019, I am satisfied that the Applicant has made out a case for allowing the Civil Application. Hence, following order :

O R D E R

- (A) Order dated 6.9.2017 passed by the Registrar (Judicial-II) is set aside.
- (B) The Appeal from Order (Stamp) No.5723 of 2017 is restored on filing for hearing on its own merits.
- (C) The Applicant to remove all office objections in Appeal from Order (Stamp) No.5723 of 2017 on or before 2.5.2019 failing which the Civil Application shall stand dismissed without referring back to the Court.
- (D) The Applicant to pay costs of Rs.5000/-.
- (E) Costs to be deposited in Kirtikar Law Library, Ist Floor, High Court, Bombay on or before 30.4.2019 and file a receipt to that effect in the Registry failing which the Civil Application shall stand dismissed without referring back to the Court.

Civil Application stands disposed of accordingly.

{K.K.TATED, J}