

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, AT NAGPUR.**

CIVIL APPLICATION (CAM) NO. 15 OF 2019

IN

ARBITRATION APPEAL NO. OF 2017

(City of Nagpur Municipal Corporation, Nagpur ..vs.. M/s. B. Narayan & Associates, Thane)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. A.M. Quazi, Counsel for the appellant.

CORAM : ROHIT B. DEO, J.

DATED : 04-12-2020

This application is taken out by the NMC seeking condonation of delay of 223 days in preferring the appeal.

2. None appears on behalf of the respondent.

3. No affidavit is filed rebutting the averments in the application.

4. The justification pleaded in support of the application for condonation of delay is articulated in paragraphs 3 to 9 of the application which read thus :

“3. It is submitted that though the impugned Order came to be passed on 1.10.2016, however, the in-charge of the section unfortunately failed to apply for the Certified Copy of the Order passed till 7.2.2017 as the concerned clerk failed to intimate him regarding the disposal of the proceedings.

4. It is submitted that the copy came to be applied on 8.2.2017 and received on 18.3.2017. It is submitted that after receipt of the Certified Copy of the Order, the clerk was further expected to bring the fact to the notice of the Court Agent of NMC, so that further action can be taken. However, the said clerk put the certified copy in old records and failed to bring to the notice of the Civil Court Agent of NMC about receipt of the certified copy of the order.

5. It is submitted that another proceedings between the same parties came to be decided by way of Award which were entrusted to the Counsel to the file the proceedings, before the Hon'ble District Judge, Nagpur challenging the said Award.

6. It is submitted that the Counsel at this juncture also pointed out as to whether actions with respect to the previously decided case were taken or not.

7. On enquiry it was revealed that the Clerk from the Prosecution Department, who had received the Certified Copy failed to bring to the notice of the concerned officer, regarding the receipt thereof and consequently the appeal as required, was not filed.

8. It is submitted that the unfortunate circumstances revealed in the third week of June 2017. Thereafter, immediate action is being taken of entrusting the matter and getting the Appeal filed.

9. It is submitted that in the aforesaid circumstances, unfortunate miscommunication the delay of 223 days has been caused, in filing the present Appeal.”

5. It is further submitted that the impugned order is also challenged by the respondent.

6. I am satisfied that the unrebuted averments in the

application make out a case for condonation of delay.

7. The application is allowed. The appeal be registered and listed on the admission board.

JUDGE

adgokar