IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.2397 OF 2018
IN
FIRST APPEAL (STAMP) NO.2053 OF 2018

M/s. United Computer Services Pvt. Ltd. ...Applicant

Versus

Syndicate Bank ...Respondent

....

Mr. Ajay Panicker i/b. M/s. Ajay Law Associate for the Applicant.

CORAM : ANIL S. KILOR, J.

DATED: 28th JANUARY, 2022.

P.C.:-

1. Heard learned counsel for the Applicant. None for the Respondent, though served.

2. Mr. Panicker, learned counsel for the Applicant states that there is a delay of 369 days in filing the First Appeal challenging the judgment and decree dated 30/07/2016 in S.C. Suit No.7086 of 2006 in H.C. Suit 2825 of 2006 passed by the learned Ad-hoc District Judge, and Assistant Sessions Judge, City Civil and Sessions Court, Greater Bombay. It is submitted that the reasons for condonation of delay are given in paragraph Nos.4 and 5 of the application, which clearly show that the

delay is not intentional but bonafide. Moreover, there was no dilatory tactics in filing the First Appeal. It is thus prayed that the delay may be condoned.

3. After going through the application, paragraph Nos 4, 5 and 6 disclose the reasons for causing delay. Paragraph Nos. 4, 5 and 6 of the application read thus:-

> 4. That Appellant/Applicant states that there was sufficient cause for not filing the present Appeal within the limitation period of 90 days. The Appellant states that over the years the business of the applicant company was on the downward trend and it was incurring losses year after year. Because of the continued losses and in absence of any business the management of the company was planning to close the business activities by filing necessary application for striking off the name of the company in records of the Registrar of Companies, Maharashtra. Necessary documents prepared in this connection and process undertaken by the management is as per Exhibit 'B' enclosed herewith. During the last one year lots of time had to be spend for arranging no dues certificate from the Bank to clear off the live charge remained with the records of the Registrar of Companies in connection with the loan obtained from Syndicate Bank, Sir P.M. Road, Mumbai long back. This was a pre-condition before filing the documents for striking off the name of the company. There being no employees the management was finding it difficult to comply with the various requirements. Earlier, the management used to hire the services of the employees of the associate companies in times of need and in this case one Mr. P.S. Thankachan, working with a sister company M/s. Nishiland Park Ltd. was attending case and since the business activities of the said company was closed from the year 2013 his services was discontinued by the said company. Thereafter Mr. Satyaprakash Jaiswar, working

with another sister concern M/s. Ratan Glitter Industries Ltd. was helping the company in co-ordinating with the management and the advocate office in the above case. However, his mother Smt. Maltidevi Jaiswar, aged about 80 years was ailing for quite some time due to paralytic attack and was bed ridden for the last one year. Therefore, he had to attend to his mother and was not in a position to attend the office regularly to brief the management about the pending litigation and follow up action to be taken in the aftermath of order passed by the ld. Judge on 30th July, 2016. Copy of the hospital bills/discharge certificates of Smt. Jaiswar is annexed hereto and marked as Exhibit 'C'.

5. Further, the promoter director of the Applicant company Mr. Paresh Shah, who is also the promotor director of the companies viz. Nishiland Park Ltd. and Ratan Glitter Industries Ltd. and whose business assets were taken over by the bank /lenders are facing multiple litigations in various forums and was finding it really difficult to devote time to attend to his other businesses diligently. These litigations are mainly contested in New Delhi, Mumbai, Pune besides several income tax cases with the Income Tax Appellate Tribunal, Commissioner of Income Tax (Appeals) besides and also to regular income tax assessments of group companies and his own individual cases for different years.

6. Unfortunately for Mr. Paresh Shah his Chartered Accountant and Consultant for the last 40 years Mr. Chandravadan R. Shah, who had been the guiding factor in all his legal and money matters expired on 27th December, 2015 and this has severely affected his businesses as he had to find an alternative competent person of the calibre of Mr. Chandravadan R. Shah to run the business affairs and advising him on various legal matters, a copy of the death certificate of Mr. Chandravadan R. Shah is annexed hereto and marked as Exhibit 'D'. With all businesses having come to an end due to take over of business assets by the bank, he was really handicapped from all angles. With almost no source of income and costly ongoing litigation he was really finding it difficult to raise finance and run the affairs smoothly and also to attend to all litigation on time. Thus

there was delay in attending to the above order for further course of action. A list of ongoing litigation with the various Forums being fought by the promoter director Mr. Paresh Shah is annexed hereto and marked as Exhibit 'E'."

4. After considering the above stated reasons stated in the application and more particularly in absence of any reply opposing the present application or disputing the facts stated in paragraph Nos.4 to 6, I am of the considered view that the delay has been properly explained in this matter. In that view of the matter though the delay is of more than 300 days, I am of the opinion that a liberal view needs to be adopted in this case. Accordingly, I pass the following order:-

ORDER

(i) The application for condonation of delay is allowed;

(ii) The delay caused in filing First Appeal is condoned. The office is requested to register the First Appeal and place the same before the Court for admission.

(ANIL S. KILOR, J.)