

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

***INTERIM APPLICATION NO.4116 OF 2021
IN
FIRST APPEAL NO.167 OF 2013***

City Industrial Development Corporation
of Maharashtra Ltd. ...Applicant

IN THE MATTER BETWEEN

City Industrial Development Corporation
of Maharashtra Ltd. ...Appellant

Vs

M/s. Isha Enterprise ...Respondents

...

Mr. G.S.Hegde with Ms. P.M. Bhansali for the
Applicant/Appellant-CIDCO.

Mr. Mayur Khandeparkar i/by Mr. Milind More for Respondents.

CORAM : SANDEEP K. SHINDE J.
DATE : JANUARY 11, 2022.

P.C. :

Heard Ms. Bhansali the learned counsel for the applicant,
the City Industrial Development Corporation of Maharashtra Ltd.
(‘CIDCO’ for short) and Mr. Mayur Khandeparkar, the learned
counsel for the respondents.

2 Applicant, CIDCO, seeks condonation of 367 days' delay and restoration of the First Appeal.

3 The CIDCO, instituted the First Appeal against the judgment and decree dated 12th August, 2011 in Special Civil Suit No.934 of 1994 passed by the learned Civil Judge, Senior Division, Thane. That suit was instituted by the, respondents-M/s. Isha Enterprises seeking decree of specific performance of the contract, possession, declaration and permanent injunction in respect of the, suit property situated at New Bombay against the CIDCO. By decree, the CIDCO was directed to execute agreement of lease in favour of the respondent/plaintiff and hand over possession of the suit plot within two months from depositing the amount of Rs.21 Lakhs by the plaintiffs in the Court.

4 The appeal was admitted on 20th February, 2013 by the Division Bench of this Court and execution of the decree was stayed.

5 Pending appeal vide conditional order dated 24th January, 2019, appellants were directed to file paper-book, within eight weeks, failing, to which appeal to stand dismissed for non-prosecution without further reference to the Court. Appellant did not file paper-book within the stipulated period. As a result, the appeal was dismissed for non-prosecution.

6 Taking note of the, fact that the appeal has been dismissed and the stay stood vacated, respondent moved an application, i.e., Special Darkhast No.14 of 2020.

7 Mr. Khandeparkar, the learned counsel for the respondents/decreed-holder, has placed on record, compilation of the orders, roznama, in Special Darkhast No.14 of 2020; wherefrom he has pointed out, although served, the CIDCO neither marked presence in the Darkhast proceedings nor resisted/opposed the execution of the decree nor made efforts to restore the First Appeal. As a result, the executing Court, executed possession warrant on 6th November, 2021

and decree stood satisfied. Mr. Khandeparkar, further, submitted that, though the CIDCO filed an application seeking restoration of the appeal in February, 2021, it was served on the respondents in December, 2021, i.e., after execution of the decree. Submission of Mr. Khandeparkar, is that the CIDCO chose to remain passive throughout in the darkhast proceedings although sufficient opportunity afforded to it, which is evident from the Roznama-proceedings. Mr. Khandeparkar submitted that since possession of the suit property has been handed over to decree-holder, appeal is rendered infructuous. Additionally, he submitted, application in hand does not disclose '*sufficient cause*' which prevented the applicant-CIDCO from seeking restoration of the First Appeal and interim relief within limitation. On these grounds, Mr. Khandeparkar opposed the application.

8 Per contra, Ms. Bhansali, the learned counsel for the CIDCO would urge that, applicant-CIDCO, shall file paper-book within fifteen days. Further, according to Mr. Bhansali though application was filed in February, 2021, due to pandemic, it could

not be heard. She would further urge that application discloses ‘*sufficient cause*’, which prevented the CIDCO from preferring an application in time, for restoring First Appeal and, therefore, delay be condoned and appeal be restored to the file.

9 Herein, the suit was instituted in 1994. Decree was passed in August, 2011; Appeal was dismissed in January, 2019; Respondent/CIDCO filed Darkhast on 12th February, 2020. Applicant/CIDCO was served and Darkhast was posted for reply of the the CIDCO on 30th January, 2021; 20th March, 2020; 17th April, 2021; 17th July, 2021 and 22nd September, 2021. Yet, CIDCO did not file reply. On 30th October, 2021, Executing Court issued possession warrant under Order 21 Rule 35 of the Code of Civil Procedure, 1908. On 26th November, 2021, warrant was executed and possession of the suit property was handed over to decree-holder vide panchanama. Therefore, in spite of the fact that the CIDCO was duly served in January, 2021, it did not resist the execution of the decree. Be that as it may, although the CIDCO had filed instant application in February, 2021, seeking restoration of the First Appeal, that fact

was not even brought to the notice of the Executing Court. Although the instant application was filed in February, 2021, it was moved for consideration in December, 2021/January, 2022. These facts demonstrate and confirm that the CIDCO was neither attentive in contesting the execution proceedings nor diligent in pursuing the instant application. For that reason, unhesitatingly, I hold that the CIDCO was not interested in defending its' rights in the suit property. Now, coming back to the application seeking delay condonation, it may be noted, application was filed in February, 2021; but served on the respondents in December, 2021. Paragraph five of the application conveys that the CIDCO was aware of the execution proceedings. Same paragraph also conveys that decree-holder had applied for withdrawal of the amount. This averment is incorrect in-as-much as the decree-holder instituted the proceedings to execute the possession decree. It exhibits casual approach of the CIDCO. Even otherwise, paragraphs 5,6,7,8,9 of the application do not disclose the circumstances, which prevented the CIDCO in pursuing the remedy in time, for restoring First Appeal to file.

10 For all the reasons, in my view, no case is made out to condone delay. As a result, application deserves no consideration. It is rejected.

(SANDEEP K. SHINDE, J.)