

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

CIVIL REVISION APPLICATION NO.85 OF 2022

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Shri. Suresh Raghunath Mhatre and Anr. ..Applicant

Versus

M/s. SOBO Estate Development Pvt. Ltd. and Ors. ..Respondents

Mr. Rohit D. Joshi, for the Applicant.

Mr. G. S. Godbole i/by Ms. Ketki Gadkari & Shon D. Gadgil, for the
for the Respondent No.1.

CORAM : NITIN W. SAMBRE, J.

DATE : 11th APRIL, 2022

PC.

1. Against the judgment and decree dated 4th August, 2014, the respondent preferred an application under Order XLI r/w Section 96 of the CPC for grant of leave to appeal, such application came to be allowed vide order below Exh.1 passed on 18th February, 2020 by the learned District Judge-1, Raigad. As such, this petition.

2. The contentions are, the judgment and decree is of 4th August, 2014. The application Exh.1 contains a pleading that there is delay in preferring an application for leave to appeal. Unless application Exh.1 is accompanied with prayer of condonation of delay, the application ought not to have been granted, particularly, in the light of the limitation prescribed under residuary clause of Limitation Act which is of three years. Further contentions are, the

applicant/decreed holder was not put to notice before the order impugned was passed.

3. As far as both these contentions are concerned, the fact remains that the respondent/proposed appellant's prayer for condonation of delay in preferring an appeal is already before the learned District Judge and same will be considered after the order impugned was passed.

4. In view of the fact that there is no express provision for grant of leave to appeal and same has to be read under Section 96 r/w Order XLI of the CPC. The prayer for grant of leave to appeal is rightly said to be not accompanied with a prayer for condonation of delay. Mr. G. S. Godbole, is justified in relying on the judgment of Gujarat High Court in ***Misc. Civil Application No.1414 of 2016 Civil Application No.12258 of 2015 (Vishnubhia Arjanji Vaghela Vs. Rameshchandra Khodidas Patel & Ors.)*** decided on 9th June, 2016.

5. Apart from above, by granting leave to appeal, right of the petitioner is not prejudiced, as he can get an appropriate opportunity to defend an appeal or an application for condonation of delay. The claim that petitioner should have been put to notice also not warranted, as the order impugned cannot be considered to be prejudicial to the interest of the petitioner.

6. In the wake of above and having regard to the law laid

down by the Apex Court in the matter of ***Smt. Jatan Kumar Golcha Vs. M/s. Golcha Properties (P) Ltd.*** reported in ***1970(3) SCC 573***, since the rule that aggrieved party can always prefer an appeal against the judgment in suit passed against the interest of such proposed applicant, in my opinion, no illegality could be noticed in the order impugned, which warrants interference in the revisionary jurisdiction.

7. The application as such fails, rejected.

8. However, the observations herein shall be confined to the issue raised before this Court, as the prayer for condonation of delay and the merits of the appeal are to be decided independent of the above observation.

[NITIN W. SAMBRE, J.]