

VRJ

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

**INTERIM APPLICATION NO.30648 OF 2022
IN
FIRST APPEAL (ST.) NO.9914 OF 2021**

Ayurvidya Prasarak Mandal Thr. Its
Trustee Ashanand I. Sawant ... Appellant
V/s.
Dilip Nagesh Katake & Anr. ... Respondent

Mr. Tejash Dande with Grishma Lad with Bharat
Gadhvi with Chinmay Deshpande with Seema Patil i/by
Tejash Dande & Associates for the appellant.

Mr. Santosh Parad for the respondent No.2.

CORAM : AMIT BORKAR, J.

DATED : JANUARY 23, 2023

P.C.:

1. The applicant/original defendant No.2 has filed present appeal challenging judgment and decree passed by the learned City Civil Court. The learned City Civil Court by impugned judgment and decree dated 2nd September, 2008 declared notice dated 6th February, 2007 issued by defendant No.1/Municipal Corporation in relation to mezzanine floor illegal and restrained the defendant No.1 from demolishing suit mezzanine floor.

2. The Defendant No.2 has filed present appeal challenging

said decree. The reason mentioned in the application is that the suit summons was served on one of the trustees of the applicant trust but he failed to take necessary steps. It is also stated in paragraph 5 of the application that the notice of the suit was served through bailiff upon the trust. The applicant has stated that the applicant has come to know about the impugned judgment and decree for the first time in October, 2020.

3. Since the applicant itself in paragraph 5 of the application has stated that the copy of plaint was duly served on Dr. Satish Tarachand Shah, who was trustee of the applicant trust through bailiff, the explanation in paragraph 3 that the applicant came to know about the decree only on 2nd September, 2008, cannot be accepted. There is delay of 12 years and 202 days in filing the appeal. The cause mentioned in the application is not sufficient to condone huge delay of more than 12 years.

4. The application is, therefore, rejected. No costs.

(AMIT BORKAR, J.)

Note: This order is modified suo motu to correct the first appeal number in the cause-title.