

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

**CIVIL APPLICATION NO. 4938 OF 2008
IN
FIRST APPEAL (ST) NO. 22396 OF 2008
WITH
CIVIL APPLICATION NO. 4939 OF 2008
IN
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**SNEHA
NITIN
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Date: 2023.12.01
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Municipal Corporation of Gr. Mumbai ...Applicant/ Appellant
Versus
Twinkle Star Co-operative Housing ...Respondent
Society.

Mr. R.Y. Sirsikar for the Appellant/MCGM.
Mr. Pranav Chavan i/b Mahesh Menon and Co. for the Respondent.

**CORAM : M.M.SATHAYE J.
DATE : 29th NOVEMBER 2023**

PC. :-

1. The above application (IA No. 4938 of 2008) is an application filed by the Appellant/MCGM for condonation of delay of 573 days in filing above First Appeal. The First Appeal is sought to be filed against the Order dated 24.07.2006 passed by the Additional Chief Judge of Small Causes Court, in Municipal Appeal No. 306 of 2002. By the impugned order, the order of Investigating Officer fixing the rateable value of Rs.3,68,210/- is set aside and the Investigating Officer is directed that he shall restore and maintain the rateable

value of land under constructions which is fixed prior to 15.10.1998 till the rateable value is revised after completing the building over the subject matter property.

2. Heard learned counsel for the Applicant/MGCM and learned counsel for the Respondent/Society. Learned counsel for the Respondent has strenuously opposed this application by relying on its detailed affidavit-in-reply dated 01.12.2011. Learned Counsel for the Respondent / Society has urged that no indulgence should be shown in the light of explanation offered for delay.

3. Perused the averments in the delay condonation application as well as reply filed by the Respondent. In essence, what is contended in the application is that at the relevant time when the impugned order dated 24.07.2006 was passed, there was only one typist available with various sections of the Municipal Corporation who were dealing with pending cases with Small Cause Court, Industrial Court, Labour Court and M.A.C.T. Court. It is submitted that the Applicant/MCGM is a vast organisation having 24 wards and there are more than 4000 matters pending in the various courts in which the Municipal Corporation is party. It is submitted that it is not possible for one typist to do all work required. It is further contended that when the amount involved in incurring typing work exceeds more than Rs.50,000/-, the sanction of the Standing Committee is required and therefore, this procedural aspect alongwith other procedure for necessary sanctions etc. has also contributed to the delay.

4. The delay in the present matter is 573 days, which is more than one and a half year. It is settled position of law that it is not the length of delay, but explanation offered therefor, is important to be considered.

5. By way of amendment, the Applicant/Municipal Corporation has sought to incorporate certain other reason, trying to explain how additional posts of stenographers, law officers, superintendent etc. were created pursuant to an order of this Court passed in some other matter on 22.03.2007. I am afraid, the action of the Municipal Corporation for increasing its manpower, after the impugned order is passed and that too after this Court issued certain direction in other matter, will not help the Applicant in the present matter. Assuming that such corrective steps are indeed taken by the Applicant / Municipal Corporation, even that has not resulted in filing the present appeal in time, which is obvious from the fact that present application is filed on 22.09.2008 as per High Court official website. If we go by this date, the delay is even more than claimed. It is almost 2 years and one month. If indeed posts were created as claimed, what prevented the Applicant from filing appeal after order of this Court dated 22.03.2007 (in other matter) till 22.09.2008 is not explained.

6. To say the least, it is simply unbelievable that in July 2006, the Municipal Corporation of Mumbai, which has one of the largest budgets amongst municipal corporations in the country, had only one typist to look after 4 different Court's work. Also,

permission of standing committee for typing budget in excess of Rs. 50,000/- as a reason for delay, is ridiculous. Even otherwise, the explanation that a typist was not available for the whole period of one and a half or two years, for preparing present appeal can not constitute sufficient cause. This explanation is nothing but an eyewash and therefore, not acceptable and deserves to be rejected.

7. In the matter of **Chief Post Master General & Ors Vs. Living Media India Ltd. & Anr (2012) 3 SCC 563**, the Hon'ble Supreme Court has held that:

“29. In our view, it is the right time to inform all the government bodies, their agencies and instrumentalities that unless they have reasonable and acceptable explanation for the delay and there was bonafide effort, there is no need to accept the usual explanation that the file was kept pending for several months/years due to considerable degree of procedural red tape in the process. The government departments are under a special obligation to ensure that they perform their duties with diligence and commitment. Condonation of delay is an exception and should not be used as an anticipated benefit for government departments. The law shelters everyone under the same light and should not be swirled for the benefit of a few.

30. Considering the fact that there was no proper explanation offered by the Department for the delay except mentioning of various dates, according to us, the Department has miserably failed to give any acceptable and cogent reasons sufficient to condone such a huge delay. Accordingly, the appeals are liable to be dismissed on the ground of delay.”

This view of the Hon'ble Supreme Court squarely applies to the facts of the present case and is therefore relied upon.

8. Therefore, in the considered view of this Court, no

sufficient cause is made out for delay condonation and as such, the present application is dismissed.

9. As a consequences of rejection of delay condonation application, the above Appeal as well as other pending Interim Application (No. 4939 of 2008) are also dismissed.

10. At this stage, learned counsel for the Applicant/MCGM seeks stay of the present order. To be fair to the party, the operation of the present order is stayed for a period of four weeks from today.

11. All concerned to act on authenticated or digitally signed copy of this order.

[M.M.SATHAYE,J.]