



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.14238 OF 2023

Gangour Foods (International) LLP

... Petitioner.

Versus

Mrs. Santradevi Hardattrai Biyani

... Respondent.

Mr. Abhishek Sawant, Mr. Pratima Soundalkar, Mr.Ameet Mehata, Ms.Aditi Dave, and Mr. Amit Patil i/by I/B Socilicslex Advocates for the Petitioner.

Mr.Mayur Khandeparkar i/by Mr.Abhishek walwaikar for the Respondent.

CORAM : SHARMILA U. DESHMUKH, J.

DATE : DECEMBER 04, 2023.

P. C. :

1. Heard.

2. The petition takes exception to the order dated 25th October, 2023 passed by the Appellate Bench of the Small Causes Court at Bombay below Exhibit No.78 of 2023 rejecting the petitioner's application for condonation of delay of 135 days caused in filing the appeal.

3. The reason set out in the application for condonation of delay is that the Applicant acquired the knowledge about the exparte judgment and decree dated 13th April, 2023 being passed only when the Bailiff visited the suit premises on 2nd September, 2023 to execute

the warrant of possession. The other reason put-forth by the Petitioner is that in the month of April, 2023, the applicant's wife had medical issues and therefore the Applicant was engaged in looking after the health of his wife. In support the copy of the medical report is annexed. It is also contended that after acquiring the knowledge about the ex-parte decree the Applicant contacted his Advocate, however, did not get any satisfactory answer and as such, there has been change of Advocate and after applying and obtaining the certified copy, the application has been filed, for which there is a delay of 135 days.

4. Learned counsel appearing for the Petitioner submits that the Appellate Court has rejected the application by observing that the Petitioner was a partnership firm and there is no reason as to why the other partners could not have proceeded with the filing of the appeal. He submits that the medical reports of his wife were already on record and immediately upon acquiring knowledge about the passing of the exparte decree, he has appointed another Advocate and obtained a copy of the decree and filed the application. He submits that this diligence on the part of the Petitioner is in fact, being held against the Petitioner by the Appellate Court by noting that the

application was made on 26th September, 2023, the certified copy was obtained on the same day and the application was verified and filed on the same day.

5. Per contra, learned counsel appearing for the Respondents points out that the Petitioner was very well aware of the proceedings inasmuch as at the time of final arguments, the application was made for condonation of delay and filing the written statement as well as an application for setting aside the 'No WS' Order. He points out the signature on the application and would contend that the Petitioner was well aware of the pending proceedings and has not acted diligently. He has further taken this Court to the Roznama and would contend that at the time when the order was passed rejecting the application for setting aside 'No WS' order, the Advocate for the Petitioner was present.

6. As regards the merit of the case, there has been rival submission advanced on the issue of grant of liquidated damages. The admitted position is that the possession of the premises is handed over and the appeal is restricted to the grant of arrears of license fees, the amount awarded towards damages at double the license fees and the amount awarded towards the liquidated

damages. Before this Court the issue is as regards the condonation of delay of 135 days caused in filing the application and as such, as regards the issue of grant of license fees and/or liquidated damages necessary submissions can be raised before the Appellate Court on the merits of the case. Any observation by this Court in present proceedings would foreclose the issue and as such, I have confined myself only to the issue of condonation of delay.

7. The application for condonation of delay for taking the written statement on record and for setting aside the 'No WS' order made at the stage of final arguments in fact reflects in the manner in which the Advocate for the Petitioner handled the proceedings. It is expected of the Advocate that proper steps would be taken by him to protect the interest of the client, which does not appear to have been done in the present case. The Petitioner has specifically contended that he became aware of the passing of the *ex parte* judgment and decree when the bailiff visited the suit premises to execute the warrant of possession. Thereafter, it appears that a new Advocate was engaged and prompt steps were taken to obtain the certified copy and to file this application for condonation of delay. In my view, no fault can be found for the timely manner in which further steps were

taken for obtaining the certified copy and filing the application, even though the same was done in one day.

8. The reason for rejection that the Petitioner is a LL.P. and as such, there is no explanation as to why the other partners could not have filed the appeal is unsustainable. The Appellate Court lost sight of the fact that the case of the Petitioner was that the knowledge about the exparte decree was obtained on 2nd September, 2023 and thereafter, necessary steps were taken for setting aside the exparte decree. The delay of 135 days cannot be said to be such a substantial delay, so as to not be condoned in the interest of justice. The provisions of Section 5 of the Limitation Act are elastic enough to apply the law in meaningful manner to sub-serve the justice. Considering the facts of the present case, in my opinion, the delay of 135 days is required to be condoned.

9. In light of the above, Petition is allowed.

(Sharmila U. Deshmukh, J.)