

K.S. Jadhav

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

INTERIM APPLICATION NO.2879 OF 2022
IN
COMMERCIAL SUIT (L) NO.535 OF 2019

Pearl Mistry Tiwari ...Applicant/Plaintiff No.2

In the matter of

Homai Meherji Mistry & Anr., ...Plaintiffs

Versus

Bhargava Estates Pvt. Ltd. & Ors., ...Defendants

Q.S. Kapasi i/b Abhishek Walwalkar, Advocate for Applicant/Plaintiff.

CORAM : R.I. CHAGLA J.

DATE : 27TH FEBRUARY, 2023.

ORDER :

1. By this Interim Application, the Applicant/Plaintiff No.2 has sought condonation of delay of 84 days in taking out the present Interim Application. Further relief is sought for setting aside the order dated 7th November, 2019 and to restore back the Suit (L) No.535/2019.

2. The Applicant has stated that upon filing of the Commercial Suit, the office objections had been raised and that steps were taken

for removing all office objections by filing praecipe dated 7th November, 2019 by a junior Advocate who was appointed which was allowed by the Prothonotary and Senior Master of this Court by granting time upto 5th December, 2019 for compliance of office objection. The conditional order dated 7th November, 2019 of the Prothonotary and Senior Master of this Court is annexed at Exhibit-A to the Interim application.

3. The Applicant has stated that the junior Advocate who was attending the matter, had left the office without prior notice and had not even assigned the matter to another Associate. Due to inadvertence of the Advocate, the Suit came to be rejected for non removal of office objections.

4. The Applicant has referred to the period from August 2019 to February 2020 when the Advocate was unwell and not regularly attending the Court and office work was looking after by his junior. Due to the default of the Junior Advocate / Associate that the office objections were not removed in time. Thereafter, from March 2020 there was onset of the Covid-19 pandemic and the Applicant has given explanation that it had become difficult to contact her Advocate and only after taking steps to contact her Advocate, the Applicant

came to know in the month of January, 2021 that the Suit was dismissed for want of removal of office objections.

5. The Applicant has thereafter explained the delay in filing Interim Application in Paragraph 12 and has relied upon Covid-19 pandemic as well as the fact that there was extension of period of limitation on ground of Covid-19 pandemic.

6. Having considered the averments in the Interim Application, as well as taking note of the fact that the Commercial Suit came to be dismissed on account of non removal of office objections as per conditional order dated 7th November, 2019 passed by the Prothonotary and Senior Master of this Court, there appears to be default on the part of the Advocate for handling the matter. The Applicant should not be made to suffer on account of default of her Advocate. Further, the delay in filing the Interim Application is attributed to the Covid-19 pandemic. Accordingly, the relief sought for is granted. Hence, the following order is passed :

(i) The delay in filing the Interim Application is condoned.

(ii) The Commercial Suit (L) No.535 of 2019 is restored to file by setting aside the order dated 7th November, 2019

passed by the Prothonotary and Senior Master of this Court.

(iii) The Plaintiff shall remove the office objections within a period of three weeks from the date of this order, failing which the Interim Application shall be rejected of without further reference to the Court.

(iv) Interim Application is accordingly disposed of.

[R.I. CHAGLA J.]