

Vinaa Khadpe
(P.S.)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLIATION NO.660 OF 2023

Arati & Company

.. Applicant

Versus

Abdul Sattar Saatgeer Momin and anr

.. Respondents

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• Mr. Anand S. Kulkarni for the Applicant.
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CORAM : MILIND N. JADHAV, J.

DATE : JANUARY 11, 2024

P.C.:

- 1.** Not on Board. Mentioned. Taken on Board.
- 2.** This Civil Revision Application takes exception to the order dated 18 August 2023 passed by the learned Principal District Judge, Solapur, below Exh.1 in Civil Miscellaneous Application No.221 of 2022 allowing Application seeking condonation of delay of 3 years 6 months and 17 days filed by the Respondents against the Judgment and decree passed on 5 February 2019.
- 3.** Mr. Kulkarni, learned Advocate appearing for the Revision Applicant has made two pointed submissions viz. that condonation of delay ought not to have been allowed, since in the interregnum, the Respondents contested RTS proceedings in respect of the suit property which were ultimately decreed in favour of the Applicant. Secondly, he would submit that the original Suit was filed in the year 2014 and was prosecuted by the Applicant / Plaintiff and after a lengthy trial it

came to be decreed and after the decree came to be passed the delay was admittedly on the part of the Respondents. Considering that, inspite of filing the statutory appeal within time, Respondents prosecuted RTS proceedings in the hope of securing favourable orders. He would therefore submit that the Application seeking condonation of delay ought to have been rejected by the learned District Judge on the above grounds.

4. He has drawn my attention to the impugned order which is at exhibit 'H' – page 65 of the Civil Revision Application. I have perused the said order. It is revealed that the RTS proceedings between the parties were in fact filed by the Respondents in the year 2014 simultaneously when the Civil Suit was filed by the Plaintiff and despite the decree granted in favour of the Plaintiff in the year 2019, the same was resisted. The date of decree is 4 February 2019 and the statutory Appeal has been filed on 24 August 2022 along with Application seeking condonation of delay. It is seen that the Appellants i.e. Respondents before me would be entitled to the benefit of arresting the period of limitation during Covid-19 pandemic as allowed under the extant orders passed by the Supreme Court in *Suo Moto* Petitions / proceedings before the Supreme Court. If the benefit of that period of limitation is granted, then the actual period of delay would be much less than 3 years 6 months and 17 days. It is seen that

this aspect has not been argued and considered by the learned trial Court at all, even though, the learned Appellate Court has allowed the Application for condonation of delay for the reasons which are mentioned in paragraph 4 of the order. I have perused the said reasons and I am not inclined to interfere with the said order considering that right of filling of Appeal is a substantive right of a litigant. However, at the request of Mr. Kulkarni, and considering the fact that the Plaintiff has been prosecuting the said proceedings for the past almost 10 years, I am inclined to direct the learned Appellate Court i.e. District Judge, Solapur to determine and conclude the hearing of Civil Appeal No.138 of 2023 as expeditiously as possible and preferably within a period of 3 months from today. This order is passed because Mr. Kulkarni would fairly inform the Court that the next date for final arguments in the Appeal has been fixed on 17 January 2024 by the Appellate Court.

5. With the above directions, Civil Revision Application is disposed.

[MILIND N. JADHAV, J.]

Vinaa Khadpe

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