

Harish

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.975 OF 2019

IN

SECOND APPEAL (ST) NO.8885 OF 2018

Panhala Hill Station

Municipal Council, Panhala,

(chief Officer)

...Applicant

Versus

Ali Abdul Gardi,

(deceased Thru Lrs)

Mehrabji Ali Gardi

...Respondent

Adv. S. S. Patwardhan for the Applicant.

Adv. Abhijit M. Adagule for Respondent Nos. 1 to 7.

Mr. Pankaj Deokar, AGP for Respondent Nos. 8 to 11.

CORAM : SHARMILA U. DESHMUKH, J.

DATE : FEBRUARY 27, 2024

P. C. :

1. Civil Application has been preferred seeking condonation of delay of 1 year 288 days caused in filing the Second Appeal. The Second Appeal has been instituted by Panhala Hill Station Municipal Council.

2. Learned counsel for the Applicant would submit that the Applicant challenged the decree of the Trial Court decreeing the suit for possession of Respondent Nos. 1 to 7. He would submit that in the Appeal, the

Applicant was represented by Assistant Government Pleader, however, the Municipal Council was not informed about passing of the decree by the First Appellate Court by the Assistant Government Pleader and it is only upon notice of execution being served upon it on 19th December, 2017 that it became aware of the passing of the judgment by the First Appellate Court. He would further submit that at that time, the office of the Chief officer of Municipal council was vacant and the additional charge had been given to the Chief officer of Wadgaon Municipal Council which is at the distance of 150km from Panhala. He submits that by reason of the aforesaid facts, there has been a delay in filing the Second Appeal.

3. Per contra, learned counsel for the Respondent Nos. 1 to 7 would submit that the Municipal Counsel was represented before the Trial Court as well as the Appellate Court and there has nothing on record to demonstrate that they were not aware of the passing of the decree by the First Appellate Court.

4. The Applicant has set out in detail the reasons for the delay. It cannot be disputed that the Municipal Council was represented by the Assistant Government Pleader and it is the specific pleading that the Municipal Council was not informed about the passing of the decree by the Assistant Government Pleader. It is the specific case of the Applicant that is it only when the notice of execution was served upon it on 19th

December, 2017 that they became aware about the decree and at that point of time the office of the Chief Officer was vacant and the decision to file the Appeal could not be taken promptly and as a reason there has been a delay. It is well settled that no litigant and particularly the Municipal Council would benefit by the delay. It is evident that immediately upon becoming aware of the passing of the decree by the Appellate Court, steps have been taken although there has been a delay due to administrative exigency on the office of the Chief Officer being vacant. As such, in my view, there is sufficient explanation tendered for condonation of delay.

5. In light of the above the delay of 1 year 288 days caused in filing the present Second Appeal is condoned. The Civil Application is allowed.

(SHARMILA U. DESHMUKH, J.)