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

**INTERIM APPLICATION NO.20301 OF 2022
IN
COMMERCIAL FIRST APPEAL (STAMP) NO.21111 OF 2022**

FTI (Earlier known as
M/s. France International Trade) Applicant

IN THE MATTER BETWEEN

FTI (Earlier known as
M/s. France International Trade) Appellant

Versus

Parag Milk Foods Ltd. Respondent

**Mr. G.S. Godbole, Senior Advocate i/b. Mr. Shivraj R. Patne &
Mr. Shan D. Gadgil, *Advocates for Applicant/Appellant.***

Mr. Kayval Shah, *Advocate for Respondent.*

**CORAM : B. P. COLABAWALLA &
SOMASEKHAR SUNDARESAN, JJ.**

DATE : JANUARY 02, 2024

P. C.

1. The above Interim Application is filed seeking a condonation of delay of 102 days in filing the above Appeal. The above Appeal challenges the order dated 15th March, 2022 passed by the Court of District Judge-2, Pune in Special Civil Suit No.73 of 2016. This suit

was originally filed under Section 9 of the Code of Civil Procedure, 1908 and thereafter on an objection being raised that the present dispute is a commercial dispute, was transferred to the Commercial Court. By the impugned order, the suit filed by the plaintiff was dismissed.

2. Mr. Godbole, the learned Senior Counsel appearing on behalf of the Applicant/Appellant submitted that the impugned judgment is dated 15th March, 2022 and a certified copy was applied for on 2nd June, 2022. The certified copy was made available on 14th June, 2022 and the above Appeal was lodged on 25th August, 2022. He submitted that the delay has taken place because the Applicant/Appellant is a foreign entity and does not have any permanent establishment in India. He, therefore, submitted that there is sufficient explanation for the delay as more particularly set out in the Interim Application and the same ought to be condoned.

3. On the other hand, the learned Advocate appearing on behalf of the Respondent submitted firstly that there is no power to condone the delay as Section 5 of the Limitation Act, 1963 will not apply to Appeals filed under the Commercial Courts Act, 2015. Even otherwise he submitted that no sufficient cause has been made out in

the above Interim Application to condone the delay. It is on these two grounds that the above Interim Application was opposed.

4. We have heard the learned counsel for the parties and have also perused the papers and proceedings in the above Interim Application. As far as the first argument canvassed on behalf of the Respondent, namely, that Section 5 of the Limitation Act, 1963 will not apply to appeals filed under the provisions of the Commercial Courts Act, 2015, we find that the same is squarely answered by a decision of the Hon'ble Supreme Court in the case of ***Government of Maharashtra (Water Resources Department) Represented by Executive Engineer Vs. M/s. Borse Brothers Engineers & Contractors Pvt. Ltd. [(2021) 6 SCC 460]***. In this decision, the Hon'ble Supreme Court has clearly held that the Commercial Courts Act, 2015 does not exclude the applicability of Section 5 of the Limitation Act, 1963. Once this is the case, we find absolutely no merit in the first contention canvassed by the learned counsel appearing on behalf of the Respondent. As far as no sufficient cause being shown, we have carefully gone through the Interim Application. We find that the delay is not inordinate and the explanation given in the Interim Application commends to us for condoning the delay. In these circumstances, the Interim Application is allowed and the delay of

102 days in filing the present Appeal is condoned.

5. Now that the delay is condoned, the Registry shall proceed to number the above Appeal subject to the Appellant/Applicant removing all other office objections within a period of four weeks from today, failing which the above Appeal shall stand dismissed without further reference to the Court.

6. The above Interim Application is accordingly disposed of. However, there shall be no order as to costs.

7. This order will be digitally signed by the Private Secretary/Personal Assistant of this Court. All concerned will act on production by fax or email of a digitally signed copy of this order.

[SOMASEKHAR SUNDARESAN, J.]

[B.P. COLABAWALLA, J.]