

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

INTERIM APPLICATION NO.16855 OF 2023

IN

FIRST APPEAL (ST) NO.21493 OF 2022

Goel Ganga India Pvt. Ltd.

(Formerly Know as Goel Ganga

Developers [India] Pvt. Ltd)

: Applicant/Appellant

Vs.

F. N. Social, Educational,

Medical Charities Trust, Pune

Through its Trustees Lazarus S. Chinappa & Ors. : Respondents

Senior Adv. Atul Damle a/w Adv. Manish Kelkar, for the
Applicant/Appellant.

Senior Adv. R. V. Govilkar a/w Adv. K. Bahadur by Adv. Sangram Chinnapa,
for the Respondent No.1.

CORAM : KISHORE C. SANT, J.

DATE : 2ND MAY, 2024

PC. :

1. Heard the parties at length. This application is for condonation of delay of 4 years & 239 days caused in filing this First Appeal challenging the order dated 4th October, 2017 passed by the Learned Joint Charity Commissioner, Pune in R.C.A. No.22 of 2016. The following dates which are material for consideration of this Application.

- (a) 4th October 2017 the impugned Order passed by the Joint Charity Commissioner thereby the Appellant & Respondent No.2 were restrained from dealing with the trust property.
- (b) 30th January, 2018 the certified copy was obtained by the Appellant.
- (c) 6th June, 2018 Delay Condonation Application bearing M.C.A.No.490 of 2018 came to be filed before the Learned District Court, Pune.
- (d) 24th February, 2020 the Application for Condonation of Delay came to be allowed.
- (e) 28th February, 2020 the Appeal came to be registered as Appeal No.131 of 2020.
- (f) 30th March, 2022 the Application came to be filed by the Respondent raising the ground that the District Court has no jurisdiction to entertain any Appeal against an order passed under Section 41E of the Maharashtra Public Trust Act (hereinafter referred to as “MPT Act”) for the sake of brevity.
- (g) 14th June, 2022 the Learned District Judge passed an order returning the record & proceeding of the Application No.22 of 2016 decided by Joint Charity Commissioner with a direction to

the Applicant to present the Appeal before the appropriate forum of law.

It is thus the Applicant has approached this Court.

2. It is the case of the Applicant that initially the Appellant had filed the Appeal before the District Court as remedy provided under law and thereafter was *bona fide* prosecuting the said Appeal. The delay that was caused in filing the Appeal before the District Court was also condoned by that Court. Considering that the Order is passed by the District Court only on 14th June, 2022, there is no delay as such. However, only since the order under challenge in the Appeal is passed in 2017. Applicant is required to file this Application on 4th October, 2017. Prior to 14th June, 2022 the Appellant was under *bona fide* impression that the District Court had jurisdiction & was prosecuting the said remedy. It is only after the Application came to be filed on 30th March, 2022 it realized that the jurisdiction would be to this Court and not to the District Court. It is in view of the fact that from 1st September, 2017 Clause No.4 to Section 2 of the MPT Act came to substituted with effect from 10th October, 2017, wherein the Court is defined as the High Court of Judicature at Bombay in place of District Court. As such the delay is for the *bona fide* reasons and the delay therefore deserves to be condoned. It is further submitted that

for the first time on 30th March, 2022 the Application was filed by the Respondent pointing out that the Appeal is not maintainable and thereafter the Learned District Court returned the appeal.

3. Learned Senior Counsel Mr. Govilkar vehemently opposes the Application. He submits that the appeal itself was filed before a Court which had no jurisdiction at all. Even on pointing out that the appeal is not maintainable the Appellant prosecuted the said appeal. It was necessary to immediately to withdraw the appeal for presentation before this Court. The certified copy of the impugned order was obtained by the Appellant on 30th January, 2018. It is thereafter on 6th June, 2018 the Application for Condonation of Delay came to be filed before the District Court on 24th February, 2020. He further submits that the definition of Court was changed from 1st October, 2017 no litigant can take a defense that he was not aware of the legal position and Appellant was prosecuting prosecuting a remedy before wrong forum this previous conduct also needs to be considered while condoning delay. He further submits that even while filing the Appeal before the District Court, it was not immediately filed but was filed after some other person had filed a review before the Joint Charity Commissioner and after the same came to be dismissed. In that review Application the Appellant had filed Intervention Application. It is

even at that stage the appeal could have been filed.

4. This Court has considered all these submissions. It is material to note that the Delay Condonation Application filed before the District Court was already allowed. The said aspect need not be considered at this stage. This Court even need not consider as to what happened prior to 14th June, 2022 i.e. till the order of return of appeal memo was passed. At the most considering these submissions of the learned Senior Counsel for the Respondent is that in spite of bringing to the notice of the parties i.e. the Appellant that Appeal is not maintainable before the District Court and still it was not withdrawn & Court was required to pass an order. This Court finds that Application was filed for the first time on 30th March, 2022. It is not the case that at the time of filing of the Appeal & immediately on appearing in the Appeal such point was raised. It was not raised even prior to that when the Respondent appear in the Application that was filed for Condonation of Delay before the District Court at Pune. It is not the case that in spite of pointing out this material aspect the Appellant still prosecuted the Appeal. At most that can be considered only for the period from 30th March, 2022 till 14th June, 2022.

5. For all this reasons this Court finds that the delay without any cause. At the most what can be considered is that now the Respondent has

to press the Appeal after 3 years and for that this Court can certainly direct the Appellant/Applicant to pay costs to compensate the Respondent. Hence the following order.

ORDER

- (a) The Application stands allowed.
- (b) Delay of 4 years 239 days stands condoned, subject to depositing cost of Rs.25,000/- in this Court within 4 weeks from today.
- (c) After the amount is deposited the contesting Respondent No.1 shall be entitled to withdraw the said amount without requiring any formal Application for withdrawal.
- (d) The Application thus stands disposed of.

(KISHORE C. SANT, J.)