



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

**INTERIM APPLICATION NO.9282 OF 2024  
IN  
COMMERCIAL FIRST APPEAL (L) NO.30045 OF 2022**

OM SOM TIRTH CO-OP HOUSING

SOC. LTD., MUMBAI

..APPLICANT

VS.

M/S. OVERSEAS CONSTRUCTIONS

THROUGH ITS PROPRIETOR

MR. MOHAMMED AZAM GOAR

..RESPONDENT

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Adv. Mutahhar Khan i/b. Adv. R. Chhapra for appellant/applicant.

Adv. Rajnikant R. Salvi i/b. Adv. Suvarna Telgote for respondent.

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**CORAM : A.S. CHANDURKAR &  
RAJESH S. PATIL, JJ**

**DATE : 3<sup>rd</sup> JULY 2024.**

**ORDER (PER : RAJESH S. PATIL, J.) :**

**1.** This Interim Application is filed seeking condonation of delay of 216 days in filing the Commercial First Appeal. It is the case of the applicant that though in the application the delay to be condoned of 216 days is sought, however, in fact the delay is only of 154 days.

**2.** The ex-parte decree was passed against the applicant (original defendant) by the Bombay City Civil Court at Dindoshi, Borivali Division, Mumbai, on 15 November 2021 i.e. during the pandemic period. The applicant got knowledge of the same only in the month

of July 2020, thereafter immediately an Appeal has been filed in this Court challenging the impugned ex-parte decree along with Interim Application for condonation of delay. It is submitted that the applicant (original defendant) on 25<sup>th</sup> March 2019 filed its written statement before the trial Court and on 26<sup>th</sup> June 2019 the trial Court framed issues and the matter was directed to be placed on 9<sup>th</sup> October 2019 for evidence and on subsequent date 4<sup>th</sup> December 2019 the Court hearing the matter was vacant. Thereafter, on 1<sup>st</sup> February 2020, none of the parties attended the matter, hence, the matter was adjourned to 12<sup>th</sup> March 2020.

**3.** On 12<sup>th</sup> March 2020, on the request made by the respondent (plaintiff) the matter was adjourned to 19<sup>th</sup> June 2020. Subsequently, on 19<sup>th</sup> June 2020 and 6<sup>th</sup> November 2020, the Court Room was vacant due to Covid restrictions.

**4.** Again on 9<sup>th</sup> March 2021, none of the parties appeared and the trial Court placed the matter for ex-parte evidence on 29<sup>th</sup> June 2021. Due to Covid-SOP, the matter was not taken up on 29<sup>th</sup> June 2021. Again on 9<sup>th</sup> July 2021, the Court directed the matter to be renumbered as Commercial Suit. The matter was adjourned to 11<sup>th</sup> October 2021. Thereafter, the matter proceeded ex-parte on 14<sup>th</sup>

October 2021 and on 20<sup>th</sup> October 2021. After that on 15<sup>th</sup> November 2021 ex-parte decree was passed in the suit.

**5.** It is the case of the applicant that only when an Execution Application was served on them in July 2022, they became aware about the passing of the ex-parte decree. Mr. Khan submitted that the ex-parte decree is passed during the pandemic period. Hence, he prayed that this Court should take a lenient view and condone the delay.

**6.** Mr. Salvi, learned counsel appearing for the respondent submitted that the defendant was well aware about the dates when the matter was fixed for evidence, however, without any justifiable reasons the defendant did not attend the trial Court proceedings. Therefore, the trial Court had no option but to pass an ex-parte decree.

**7.** We have heard both the sides and have also considered the documents on record.

**8.** The Supreme Court in the proceedings of Suo-motu Writ Petition (Civil) No. 3 of 2020 has held that in cases where the limitation period expired during the period between 15<sup>th</sup> March 2020 till 28<sup>th</sup> February 2022, notwithstanding the actual balance period of

limitation remaining, all persons shall have a limitation period of 90 days from 1<sup>st</sup> March 2022.

**9.** The present proceedings are covered by the order passed by the Supreme Court in Suo-motu Writ Petition (Civil) No. 3 of 2020. Taking into consideration the facts of the present proceedings, according to us, a case is made out by the applicant which is a Co-operative Housing Society, to condone the delay in filing the Commercial First Appeal before this Court, subject to payment of cost, which is quantified at Rs.25,000/-.

**10.** Hence, the Interim Application is allowed in terms of prayer clause (a) subject to the applicant paying an amount of Rs.25,000/- to the non-applicant within a period of four weeks from today.

**11.** The Interim Application is accordingly disposed of.

[ RAJESH S. PATIL, J. ]

[ A.S. CHANDURKAR, J. ]