

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

INTERIM APPLICATION NO.866 OF 2024

IN

APPEAL (L) NO.33359 OF 2024

WITH

APPEAL (L) NO.33359 OF 2023

IN

EXA. NO.329 OF 2023

WITH

INTERIM APPLICATION (L)NO.8308 OF 2024

IN

APPEAL (L) NO.33359 OF 2023

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The Deccan Co-operative Housing
Society Limited

.. Applicant/
Appellant.

Versus

Nandkumar D. Rajpurkar

.. Respondent.

Adv. Mr. Vikramjit Garewal with Ms. Neha Mehta, Ms. Aayushi Gohil
and Mr. Akshay Dhayalkar i/b. M. T. Miskita & Co., for the Applicant/
Appellant.

Adv. Mr. Yatin R. Shah i/b. Yatin Shah & Co., for the Respondent.

CORAM: B. P. COLABAWALLA &
FIRDOSH P. POONIWALLA, JJ.
DATE: AUGUST 5, 2024

P. C.

1. The above Interim Application [I.A. No.866 of 2024] is filed seeking a condonation of delay of 11 years and 28 days in filing the present Appeal. The reasons for the delay have been mentioned in paragraph 2, 3, 4, 5, 6 and 9 of the Application, which read thus:-

“2:- The Applicant Society states that resultantly the Defendant filed the Suit No.1111 in the year 2000. The Applicant states that the Defendant Society had filed vakalatnama through their earlier advocate on record Mr. Devendra V. Raut.

3:- The Applicant Society states that the Society had lost all its contact with the advocate on record and advocat on record also failed and neglected to update the Defendant Society about status of the original suit.

4:- The Applicant states that on 6th September 2012 the suit was decreed ex parte as the advocate on record for the Defendant Society failed to appear and the Applicant Society was not aware about ex parte Judgement and Decree dated 6th September 2012, passed by this Hon’ble Court.

5:- The Applicant Society states that since they had lost all contacts with earlier advocate on record and since advocate on record also failed to appear in the matter, ex parte Judgement and Decree was passed. The Applicant Society states that during the span of entire trial i.e. 2000 to 2012, the Managing Committee of the Society was changed and due to such change, the new Managing Committee was not aware about the pendency of the suit before this Hon’ble Court. The Applicant Society states that due to non-communication from the advocate on record and due to lack of knowledge, ex parte Judgement and Decree was passed and subsequently the said ex parte Judgement and Decree 6th September 2012 remain unchallenged.

6:- The Applicant Society states that the most of the Managing Committee members of Society are senior citizens, and they travel for their personal work/business out of Mumbai and due to which the Applicant Society could not keep track on the status of the suit and ultimately decree was passed.

9:- *The Applicant Society states that due to non-appearance and non-communication by the advocate on record of the Society the Applicant Society is suffering from ex-parte Judgement and Decree dated 6th September 2012 and facing Execution Application No.329 of 2023. The Applicant Society states that nonappearance on behalf of the Applicant Society was not intentional or deliberate however since the advocate on record irresponsibly neglected the proceedings of the Trial Court the ex-parte decree was passed. The Applicant Society states that the committee members are not aware about present status or whereabouts of the earlier advocate on record. The Applicant society states that the Defendant Society should not be held responsible for mistake and negligence of the advocate on record.”*

2. Additionally, the learned Counsel appearing on behalf of the Applicant/ Appellant has also brought to our attention paragraph 9 of the Affidavit in Rejoinder dated 22nd May, 2024 to some how explain the aforesaid inordinate delay.

3. After carefully gone through the aforesaid Interim Application as well as Affidavit in Reply and the Affidavit in Rejoinder, we are not satisfied that there is a sufficient explanation for the enormous delay of 11 years and 28 days in filing the present Appeal. We say this because it is not as if the members of the Applicant-Society are illiterate people who do not understand the implications of their action. Merely blaming the previous Advocate and/or the previous Managing Committee of the Society, is not a good enough explanation to condone such a huge delay.

4. In fact, it has been brought to our attention that even in the Suit, after the writ of summons was served, the Applicant Society entered appearance, but thereafter did nothing and did not even file any Written Statement. It was in these circumstances that the suit was transferred to the list of un-defended suits and thereafter an ex-parte decree was passed, which is impugned in the present Appeal.

5. Considering the over all facts and circumstances of the case, we are of the opinion that no case for condonation of delay is made out. The delay is enormous which cannot be explained.

6. In these circumstances, the Interim Application seeking a condonation of delay in filing the above Appeal is hereby dismissed. Consequently, so is the Appeal. However, there shall be no order as to costs.

7. In view of the dismissal of the above Interim Application as well as the Appeal, nothing survives in Interim Application (L) No.8308 of 2024 and the same is also disposed of accordingly.

8. 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.

[FIRDOSH P. POONIWALLA, J.]

[B. P. COLABAWALLA, J.]