

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

INTERIM APPLICATION NO. 8307 OF 2024.

IN

FIRST APPEAL (ST) NO. 9051 OF 2024.

M/s. Modern Cargo Services Pvt. Ltd. Through Its ...Appellant/
Authorized Signatory Mr. Sham Nathuram Yenpure Applicant.

Versus

Rajesh Arjun Pawar And Ors. ...Respondents.

Adv. Prasad Apte and Adv. Kiran P Chandorkar for the Appellant/Applicant.
None for the Respondents.

Coram : Sharmila U. Deshmukh, J.

Date : March 25, 2025.

P. C. :

1. Interim Application has been preferred seeking condonation of delay of 1 year and 78 days caused in preferring the Appeal against the order dated 7th January 2023 passed by the City Civil Court in Execution Application No. 57 of 2017.

2. Learned Counsel appearing for the Applicant submits that the Respondent No. 2 was Original Defendant who suffered *ex parte* decree in Summary Suit No. 547 of 2016 filed by the Respondent No. 1. She would further submit that on 21st December, 2023, when the bailiff visited the Applicant to execute the warrant of attachment, the Applicant become aware that the Trial Court had passed impugned

Order dated 7th January, 2023 making Garnishee Notice absolute. She submits that an affidavit-in-reply had already been filed by the present Applicant before the Respondent No. 3 Sheriff of Bombay which was not placed for consideration before the Executing Court. She submits that the Roznama of the Trial Court does not make any mention of the affidavit-in-reply and the Applicant was under the impression that the affidavit-in-reply will suffice. She submits that it is only after becoming aware of the warrant of the attachment, legal advice was taken and present advocate was contacted who advised that a notice of motion be taken out. However before the notice of motion could be filed, the Respondent No. 2 withdrew the execution proceedings and under protest, the Applicant has paid the sum of Rs. 1,37,850/-.

3. Though served none appears for the Respondent Nos. 1 and 2.

4. It is specific case of the Applicant that an affidavit-in-reply to the Execution Application was filed by the Applicant pointing out that the Respondent No. 2 had already left the services of the company and there was nothing due and payable by the Company to the Respondent No. 2. As the affidavit-in-reply was not placed before the Executing Court, the impugned order came to be passed making Garnishee Notice absolute. The Applicant was under the impression that as the affidavit-in-reply clarified the position no further steps will

be taken. It is only on 21st December, 2023 when the warrant of attachment was issued that the Applicants become aware that the Executing Court has not considered the affidavit-in-reply and has passed the impugned order.

5. As such there is sufficient explanation for condoning the delay of 1 year and 78 days caused in preferring the Appeal. The Interim Application is allowed.

[Sharmila U. Deshmukh, J.]