

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

INTERIM APPLICATION NO. 14876 OF 2024

IN

FIRST APPEAL (St.) NO. 32638 OF 2024

Avatar Singh Narang

...Applicant.

IN THE MATTER BETWEEN:

Avatar Singh Narang

...Appellant.

Versus

Suresh Sharma and Others.

...Respondents.

*Mr. Gautam Ankhad, Senior Advocate a/w Ms. Krupali Rajani, Ms. Shivani Jadhav, Ms. Aafreen Shaikh for the Appellant/Applicant.
Mr. Ashok Singh for Respondent No.1.*

Coram : Sharmila U. Deshmukh, J.

Date : January 21, 2025.

P. C. :

1. Interim Application has been preferred by the Applicant who is the original Defendant seeking condonation of delay of 969 days caused in preferring the First Appeal.
2. Briefly stated, the facts of the case are that, Respondent No 1- the original plaintiff had filed Suit No 8136 of 1999 for declaration *qua* the Agreement dated 19th April, 1995 executed between the Plaintiff and Defendant Nos. 2 to 4 and seeking recovery of amount from the defendants, which was initially filed before the High Court in 1999 and later transferred to the City Civil Court. The present Applicant who was the Defendant No.3 in the proceedings had filed his Written

Statement through the Advocate who was engaged to represent the Applicant. The judgment dated 16th March, 2022 decreeing the suit is sought to be challenged by way of present Appeal.

3. The Interim Application seeking condonation of delay pleads that the dispute between the parties was referred to the sole Arbitrator and Arbitral Award was passed on 19th June, 2006 adjudicating the same issues which had been raised in the Civil Suit and despite thereof, the Trial Court proceeded with the civil proceedings. It is further pleaded that the Objection Petition under Section 34 of the Arbitration and Conciliation Act, 1996 came to be dismissed, as against which the Appeal before the High Court of Madhya Pradesh was also dismissed. The Respondent No.1 who is the original plaintiff preferred Special Leave Petition No. 14901 of 2018 before the Apex Court and during the pendency of Special Leave Petition, Respondent No.1 filed an Application on 30th August, 2022 for placing additional documents on record which included the judgment and decree dated 16th March, 2022 passed by City Civil Court. The Application pleads that the Applicant acquired knowledge about the impugned judgment and decree when the same was sought to be placed on record before the Apex Court. Immediately thereafter, on 6th May, 2023, the Applicant preferred the Notice of Motion No. 101755 of 2023 in the City Civil Court under Order IX, Rule 13 of Civil Procedure Code, 1908 for setting aside the

impugned judgment dated 16th March, 2022. The Notice of Motion was permitted to be withdrawn in view of the fact that the City Civil Court did not have the record and proceedings of the original suit as Defendant No.2 in the civil suit has preferred the appeal against the impugned judgment in which the Record and Proceedings was called for by this Court and therefore, there was no record which was available with the City Civil Court. It is further pleaded that after withdrawal of the Notice of Motion on 24th October, 2024 within a period of 30 days, i.e. on 12th November, 2024, the present Application for condonation of delay along with Appeal has been filed before this Court.

4. The Application has been opposed by Respondent No.1 by filing his Affidavit-in-reply contending that the present Applicant was aware of the City Civil Court proceedings and had filed a Vakalatnama in and about January, 2003 and was duly represented by an Advocate and had also filed his Written Statement. It is further pleaded that the Appeal is time-barred as he was aware of the judgment and decree and though the certified copy was applied on 9th December, 2022, it is clear that there is delay of nearly 2 years for which there is no explanation. It is further contended that there is no plausible reason for the delay of 750 days and there is no inherent right to seek condonation of delay.

5. Mr. Ankhad, learned Senior Advocate appearing for the Applicant

submits that the Applicant received the knowledge about the passing of the impugned judgment on 19th November, 2022 and had immediately taken steps by filing a Notice of Motion under Order IX, Rule 13 of CPC. Viewed from that aspect, he would submit that the delay is only of 168 days from the date of knowledge of the judgment and award till the appropriate steps were taken for filing of the Application under Order IX, Rule 13 of CPC. He submits that the Application was not adjudicated by the City Civil Court as the record and proceedings was called for by this Court compelling the Applicant to withdraw the Notice of Motion and file the present Appeal which is done within a period of 30 days. He submits that in the present case, on the same subject-matter, the Applicant is a decree-holder as far as the Arbitral Award is concerned, whereas the Respondent is a decree-holder as far as the City Civil Court proceedings is concerned. He submits that the Trial Court though noted the Arbitration proceedings had thereafter, proceeded to decide the suit. He submits that the roznama of the City Civil Court will show that on 4th December, 2015, Advocate for Applicant had taken discharge in the matter without any notice to the present Applicant and therefore, the Applicant was unaware of the said fact and could not take steps for engaging some other lawyer. He submits that it is specifically pleaded that it is only when the copy of the judgment and order of the City Civil Court was

sought to be placed on record before the Apex Court that the Applicant received the knowledge of passing of the judgment and order.

6. *Per contra* Mr. Singh, learned counsel appearing for Respondent No.1 would submit that the suit was of the year 1999 and the Arbitration proceedings were initiated subsequently. He submits that it is not the case of the Applicant that he was unaware of the proceedings and only contention is that he was unaware of the judgment passed by the City Civil Court. He submits that it is a deliberate attempt to delay the proceedings in which Respondent No.1 is a decree-holder. He submits that all the issues were placed for consideration before the City Civil Court and the detailed judgment has followed. He would further submit that the Applicant cannot take the benefit of lack of knowledge particularly, when he has been negligent in prosecuting the civil proceedings. He submits that it is the duty of the litigant to keep himself abreast about the proceedings and for a period of seven years, after the discharge of the Advocate for the Applicant, the matter was adjourned from time to time to enable Defendant No.3 who is the Applicant herein to take necessary steps in the matter.

7. In rejoinder, Mr. Ankhad would submit that the non-appearance is not deliberate. He submits that as far as Defendant No.2 is

concerned, the First Appeal has already been admitted and the stay has been granted in the identical contract which was entered by Respondent No.1 with the parties. He submits that the Supreme Court order also makes it clear that the cognizance has been taken of the Arbitral Award and the subsequent judgment of the Civil Court.

8. In sur-rejoinder, Mr. Singh, would submit that the Supreme Court proceedings arose out of Arbitration proceedings, and in those proceedings, an Application was made in 2022 for the purpose of placing the copies of the subsequent decree as well as other documents on record.

9. I have considered the submissions and perused the record.

10. The issue which arises for consideration in the present case is whether there is sufficient explanation tendered for condoning the delay of 969 days caused in preferring the First Appeal. The present Appeal has been filed on 30th October, 2024 and the judgment and decree is dated 16th March, 2022. Firstly, it needs to be noted that though the delay is sought to be calculated from the date of impugned judgment and order, this Court cannot lose sight of the fact that on 6th May, 2023, the Applicant had filed a Notice of Motion under Order IX, Rule 13 of CPC before the Trial Court for setting aside the *ex parte* judgment and order of the City Civil Court. Irrespective of the fact that whether the said judgment was *ex parte* judgment or not, the fact

remains that the Applicant had taken prompt steps immediately on becoming aware of passing of the impugned judgment and order in the month of November, 2022. The proceedings before the City Civil Court, i.e. the Notice of Motion was adjudicated till 24th October, 2024, and has been permitted to be withdrawn only for the reason that the record and proceedings has been called by this Court in the pending other First Appeal and the City Civil Court was unable to proceed with the hearing. Roznama of the City Civil Court would show that the proceedings came to be withdrawn with the observation that it would be appropriate for the Applicant to file an appeal before this Court, which was also done promptly within a period of 30 days. If one calculates the period which was spent for prosecuting the Notice of Motion which was a correct remedy in law, and have been disposed of only for the reason that record and proceedings was called by this Court, the delay which will have to be taken into consideration would only be the delay of about five months and odd days from date of acquiring knowledge till filing of Notice of Motion.

11. The explanation tendered is that the Applicant was unaware of passing of the judgment by the Trial Court. The Applicant had engaged an Advocate to represent him in the matter and at least till 2015, the proceedings were attended by the concerned Advocate. It is on 4th December, 2015, that the Advocate for the Applicant made an

Application for seeking discharge. The Trial Court permitted the discharge of the Advocate without following the procedure prescribed under the Civil Manual. Rule 660 of the Civil Manual provides that the appointment of any Advocate shall be deemed to be in force to the extent provided in that behalf by Rule 4 of Order III of Code of Civil Procedure, 1908. Pertinent to note is sub-rule (4) of Rule 660 which provides that where an Advocate wishes to withdraw his appearance, he shall serve a written notice of his intention to do so on his client at least seven days in advance of the case coming up for hearing before the Court. Leave of the Court to withdraw the appearance may also be applied for if the client has instructed the Advocate to that effect. The Advocate is required to submit a note in writing requesting the Court for permission to withdraw his appearance and to file along with that the copy of the intimation given to the client together with the written acknowledgment by the client. The provision empowers the Court to grant permission for withdrawal of appearance if it is satisfied that no inconvenience is caused to the Court or the client while permitting the Advocate to withdraw his appearance and while permitting, the Court is also entitled to impose such terms and conditions as it may deem proper in the interest of parties. The procedure prescribed by sub-rule (4) of Rule 660 of Civil Manual ensures that the interest of litigant is protected and the litigant is well-aware of the fact that his Advocate is

seeking discharge in the matter. The rule also vests power in the Civil Court to refuse to discharge the Advocate if it is found to cause inconvenience to the Court or to the litigant.

12. In the present case, upon perusal of the roznama, it is clear that the Advocate has been permitted to withdraw his appearance without the Court being satisfied about the procedure being followed as per sub-rule (4) of Rule 660 of the Civil Manual. It is not demonstrated from the record that the Applicant was served with notice by this Advocate intimating him about his intention to withdraw appearance or that the Applicant was aware of the Application for discharge filed by his Advocate. Despite non-compliance of Rule 660(4) of Civil Manual, the Advocate has been permitted to take discharge. Even thereafter, no notice has been issued to the Applicant intimating him about his Advocate being discharged, which would have enabled Applicant to take necessary steps in the matter. Although, it is sought to be contended that the Applicant has been negligent in not contacting his Advocate and letting the proceedings before the City Civil Court go on, the Applicant had taken necessary steps by engaging the Advocate and was secure in the knowledge that the proceedings are being attended regularly by the Advocate. The civil proceedings are of the year 1999 and it is only in the year 2015, that the Advocate for the Applicant sought discharge and there was no way for the Applicant to know that

the Advocate would not continue to attend the matter and would seek discharge in the year 2015. Though it is expected on the part of litigant to keep in constant touch with his Advocate in order to ensure that the proceedings are being attended properly, the prompt filing of Notice of Motion after acquiring knowledge about the passing of the Judgment indicates that the Applicant had been diligent in pursuing his remedies. As discussed above, though the days of delay is shown to be of 969 days, the period during which the Applicant was prosecuting the Application under Order IX, Rule 13 would enure to the benefit of the Applicant. Further the delay will have to be considered from date of acquiring knowledge in November, 2022. Even after acquiring knowledge, there is delay of about 5 months and odd days in filing the Notice of Motion which can be condoned by imposing cost.

13. In light of the above, the Interim Application is allowed. Delay stands condoned subject to payment of cost of Rs.50,000/- to be paid to 'Tata Memorial Hospital' within a period of four weeks from today.

[Sharmila U. Deshmukh, J.]