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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
INTERIM APPLICATION NO. 14961 OF 2024
IN
APPEAL FROM ORDER (ST) NO. 30677 OF 2024
WITH
INTERIM APPLICATION (ST) NO. 30680 OF 2024**

Kirtan Premji Patel ... Appellant/Applicant

Vs.

Assistant Assessor and Collector ... Respondents

D-Ward and Others

Mr. Rajiv Hingu a/w. Mr. Deepraj Shetye i/b. Mr. Rajiv Hingu for the
Appellant/Applicant.

Mr. D. J. Haldankar, AGP for the Respondent-State.

Mr. Om Suryavanshi for BMC.

CORAM : GAURI GODSE, J.

DATE : 15th JANUARY 2025

ORDER :

1. Heard learned counsel for the applicant. This application is for condonation of delay of 352 days in filing the appeal. The appeal is preferred to challenge the dismissal of the appellant's notice of motion on 3rd October 2023.

2. Learned counsel for the corporation vehemently opposes delay condonation application. He submits that the suit structure as per the suit notice is already demolished. He submits that the suit

was also thereafter dismissed in default. He submits that there is nothing on record to indicate that the structure is still in existence. He submits that by filing proceedings the applicant intends to restore the structure which is already demolished.

3. Learned counsel for the applicant submits that the assessment extract produced on page 57 of the appeal indicates that the plaintiff's structure was in existence prior to 1961. He therefore submits that it is prior to datum line and therefore protected. Learned counsel for the appellant however does not dispute the observation in the impugned order that the demolition of the mezzanine floor was carried out by the corporation twice. Learned counsel for the appellant submits that the admission recorded in the impugned order pertains to partial demolition. However, nothing is on record which would indicate that the mezzanine floor on which the plaintiff claims right is in existence.

4. I see no fault in the reasons recorded in the impugned order. There is no merit in the appeal from order. In the facts and circumstances of the case delay in filing the appeal is condoned and the interim application for delay is allowed.

5. For the aforesaid reasons appeal is dismissed.

6. In view of the dismissal of the appeal pending Interim Application (St) No.30680 of 2024 for interim relief is disposed of as infructuous.

[GAURI GODSE, J.]