

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

**CIVIL APPLICATION NO.1039 OF 2014
IN
SECOND APPEAL (ST) NO.831 OF 2014**

Mr.Vijaykumar Kantilal Kothari .. Applicant

Vs.

Eknath Vishnu Bhandare and Ors. .. Respondents

Mr.Vishwanath Patil i/b Mr.Yuvraj Patil for the applicant

Mr.P.G.Jagdale for the respondent nos.1, 2, 5 to 7

**CORAM : K.K.TATED, J.
DATED : 07/09/2015**

PC:

1 Heard the learned counsel for the parties.

2 This application is preferred by defendant for condonation of 320 days delay in filing Second Appeal challenging the judgment and decree dated 28.9.2012 passed by Appellate Court in Regular Civil Appeal No.199 of 2003 reversing the judgment and decree passed by Trial Court in Regular Civil Suit No.47 of 1999 dated 2.5.2003 and restrain the applicant defendant from disturbing the peaceful possession of the respondent plaintiff over the suit property namely, CTS No.537, Gram Panchayat House No.1221 (Old No.930) adm. 532.6 sq.meters out of 856.60 sq.meters of Village Tembhurni, Taluka Madha, District Solapur.

3 The learned counsel for the applicant submits that as soon as the decree was passed by Appellate Court, they immediately applied for certified copies on 4.10.2012. Same was ready for delivery on 30.11.2012 and collected on 4.12.2012. He submits that in between one Mr.Bhagwan Manik Tarte tried to settle the matter between both the parties out of court. He submits that in that settlement process some time took place. Hence, there is delay in preferring the present Second Appeal in this court. He submits that applicant has good chance of success in the present matter. He submits that if delay is not condoned, irreparable loss and injury will be caused to the applicant.

4 On the other hand, the learned counsel for the respondent vehemently opposed the present Civil Application. These respondents filed Affidavit-in-Reply dated 11.2.2015. The learned counsel for the respondent denied the settlement talks between both the parties. He further denied that the said Bhagwan Manik Tarte is relative of the respondent. He never contacted the respondent for settlement of this matter. He submits that applicant has made incorrect statement on solemn affirmation before this court to gain sympathy for condonation of delay. Hence, there is no substance in the present Civil Application and same be dismissed with costs.

5 Office note shows that Civil Application stands dismissed against respondent nos.3 and 4 as per the learned Registrar-II's order dated 16.6.2015. It is to be noted that the applicant defendant immediately applied for certified copy on 4.10.2012. That itself shows that his intention was to challenge the order passed by appellate court before

this court. But because of settlement talks there was there was delay on the part of applicant to prefer the present Civil Application.

6 It is to be noted that the Apex Court in the matter of ***N.Balkrishnan Vs. M. Krishnamurthy (1998) 7 SCC 123*** held that the object of fixing the time limit is not meant to destroy the rights. The law of limitation fixes a lifespan for such legal remedy for the general welfare. Paragraph Nos.11, 12 and 13 of the said judgment read thus :

11. Rules of limitation are not meant to destroy the right of parties. They are meant to see that parties do not resort to dilatory tactics, but seek their remedy promptly. The object of providing a legal remedy is to repair the damage caused by reason of legal injury. Law of limitation fixes a life-span for such legal remedy for the redress of the legal injury so suffered. Time is precious and the wasted time would never revisit. During efflux of time newer causes would sprout up necessitating newer persons to seek legal remedy by approaching the courts. So a life span must be fixed for each remedy. Unending period for launching the remedy may lead to unending uncertainty and consequential anarchy. Law of limitation is thus founded on public policy. It is enshrined in the maxim Interest reipublicae up sit finis litium (it is for the general welfare that a period be put to litigation). Rules of limitation are not meant to destroy the right of the parties. They are meant to see that parties do not resort to dilatory tactics but seek their remedy promptly. The idea is that every legal remedy must be kept alive for a legislatively fixed period of time.

12. A Court knows that refusal to condone delay would result in foreclosing a suitor from putting forth his cause. There is no presumption that delay in approaching the court is always deliberate. This Court has held that the words "sufficient cause" Under Section 5 of the Limitation Act should receive a liberal construction so as to advance substantial justice vide Shakuntala Devi Jain v. Kuntal Kumari, 1969 SC 575 and State of West Bengal v. The Administrator, Howrah Municipality, AIR 1972 SC 749.

13. It must be remembered that in every case of delay there can be some lapse on the part of the litigant concerned. That alone is not enough to turn down his plea and to shut the door against him. If the explanation does not smack of mala fides or it is not put forth as part of a dilatory strategy the court must show utmost consideration to the suitor. But when there is reasonable ground to think that the delay was occasioned by the party deliberately to gain time then the court should lean against acceptance of the explanation. While condoning delay the Court should not forget the opposite party altogether. It must be borne in mind that he is a loser and he too would have incurred quite a large litigation expenses. It would be a salutary guideline that when courts condone the delay due to laches on the part of the applicant the court shall compensate the opposite party for his loss.”

7 Considering the submissions made by the learned counsel for the Applicant, the averments made in the Application and the law declared by the Apex Court, I am satisfied that the Applicant has made out a case for allowing the present Civil Application. At the same time, applicant has to pay cost of Rs.10,000/- to the respondent within four weeks from today, failing which Civil Application shall stand dismissed without referring back to the court. Hence, following order:

- a) Delay in preferring Second Appeal is condoned.
- b) Applicant either to pay to the advocate for the respondent nos.1, 2, 5 to 7 or deposit in the Registry sum of Rs.10,000/- by way of cost within four weeks from today, failing which Civil Application shall stand dismissed without referring back to the court.
- c) If cost is deposited in the Registry of this court within stipulated time as stated hereinabove, respondent nos.1, 2, 5 to 7 are entitled to withdraw the same without furnishing any security.

- d) Civil application stands disposed off accordingly.

(K.K.TATED, J.)

CERTIFICATE

Certified to be true and correct copy of the original
signed order.