

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE JURISDICTION

CIVIL APPLICATION NO.109 OF 2015
 IN
 APPEAL FROM ORDER (ST) NO.1039 OF 2015
 AND
 CIVIL APPLICATION NO.116 OF 2015
 IN
 APPEAL FROM ORDER (ST) NO.1086 OF 2015

Municipal Corporation for Greater Mumba	... Applicant
Vs.	
Mulchand Ramadhar Yadav & Anr.	... Respondents

AND
 CIVIL APPLICATION NO.112 OF 2015
 IN
 APPEAL FROM ORDER (ST) NO.1018 OF 2015

Municipal Corporation for Greater Mumba	... Applicant
Vs.	
Dayashankar Mulchand Yadav & Anr.	... Respondents

AND
 CIVIL APPLICATION NO.115 OF 2015
 IN
 APPEAL FROM ORDER (ST) NO.1083 OF 2015

Municipal Corporation for Greater Mumba	... Applicant
Vs.	
Krishnavati Ramanand Rajbhar & Anr.	... Respondents

Mr. S. K. Sonawane for the Applicant
 Mr. Ashutosh Kaushik i/b. Kaushik & Co. for the Respondent No.1.
 Mr. Arvind Pandey i/b. Rakesh Agrawal for Respondent No.2

CORAM: K.K. TATED, J.
DATED : FEBRUARY 9, 2015

PC. :

1. Heard the learned counsel for the parties. All these Civil Applications are preferred by original Defendant Corporation for condonation of 144 days delay in filing the Appeal from Order challenging the order dated 11/07/2014 passed by the Bombay City Civil Court, Mumbai. The learned counsel for the Applicant submits that as soon as the impugned order is passed by the Trial Court, they applied for certified copies on 30/07/2014 and same were received on 06/08/2014. He further submits that the delay is due to procedural part i.e. taking some time to prepare the papers and proceedings of the matter etc. He further submits that they have good chance of success in the appeal. The learned counsel for the Applicant relies on paragraph 4 of the Civil Application in support of his contention. The Applicant submits that if delay is not condoned, irreparable loss and injury will be caused to the Applicant.

2. On the other hand, the learned counsel for the Respondent No.1 original Plaintiff vehemently opposed the Civil Application. He submits that the Applicant has not shown sufficient cause for condonation of delay. He further submits that the Applicant failed to show sufficient cause. Hence, this Hon'ble Court be pleased to dismiss the Civil Application.

3. The learned counsel for Respondent No.2 submits to the Court orders.

4. 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.”

5. Considering the submissions made by the learned counsel for the Applicant, reasons disclosed in paragraph 4 of the Civil Application and the law laid down by the Apex Court in N.Balkrishnan (supra), I am of the opinion that the Applicant has made out a case for allowing the Civil Application. At the same time, the Applicant shall pay cost of Rs.750/- in each matter to Respondent No.1, within four weeks from today. Hence, the following order:

- a) Delay in filing the Appeals from Order is condoned in each Civil Application.
- b) The Municipal Corporation to pay cost of Rs.750/- each Civil Application to Respondent No.1 – original Plaintiff within four weeks from today, failing which the Civil Applications shall stand dismissed without further reference to the court.
- c) Civil application stands disposed off accordingly.

(K.K. TATED, J.)