

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

**CIVIL APPLICATION NO. 226 OF 2015
IN
APPEAL FROM ORDER (ST) NO. 1156 PF 2015**

Municipal Corporation of Greater Mumbai ..Applicant

Vs.

Jilodhar Bechan Yadav and Anr. ..Respondents

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Mr. Vinod Mahadik, Advocate for Applicant.

Mr. J.G. Damani, Advocate for Respondent No.1.

Mr. Rakesh Agrawal, Advocate for Respondent No.2.

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CORAM : K.K. TATED, J.

DATED : 24 FEBRUARY 2015

P.C.:

1. Heard learned Counsel for parties.
2. This application is preferred by the original defendant for condonation of 147 day's delay in filing the Appeal from Order challenging the order dated 11 July 2014 passed by the City Civil Court, Mumbai in Notice of Motion in L.C. Suit No. 1577/2014. The learned Counsel for applicant submits that they have applied for a certified copy on 30 July 2014 and the same was received on 6 August 2014. He submits that thereafter the applicant took sometime to prepare Appeal

from Order and type all the papers. They filed the Appeal from Order in this Court on 19 December 2014 with application for condonation of delay. The learned Counsel relies on paragraph 4 and 5 of the Civil Application. He submits that in the interest of justice, this Hon'ble Court be pleased to condone the delay in preferring Appeal from Order. He submits that the delay is not intentional. He submits that if the delay is not condoned, irreparable loss will be caused to the applicant. He also submits that the applicant has good chance of success in the present appeal.

3. On the other hand, the learned Counsel for Respondent No.1 vehemently opposes the present Civil Application. They filed affidavit-in-reply dated 21 February 2015. The learned Counsel for Respondent No.1 submits that though the Respondent No.2 was not added as party in trial court proceeding, the applicant had shown respondent no.2 in the present proceeding. Hence Civil Application itself is not maintainable. He further submits that hearing of the notice of motion is started, therefore there is no question of entertaining the present Civil Application. He further submits that the reasons disclosed by the applicant in paragraph 4 and 5 of Civil Application did not show any sufficient cause for condoning the delay. Hence Civil Application is to be dismissed with cost.

5. I heard both the sides. The reasons disclosed by the applicant in paragraph 4 and 5 shows sufficient cause for condonation of delay.

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 reasons disclosed by the applicant and law declared by the Apex Court I satisfy that the applicant has made out a case for allowing the Civil Application. But at the same time applicant has to pay the cost to the Respondent No.1. Hence following order:

- (i) Delay of 147 days in preferring Appeal from Order is condoned.
- (ii) Applicant to pay cost to the Respondent No.1.
- (iii) Civil Application disposed of accordingly.

[K.K. TATED, J.]