

FARAD CONTINUATION SHEET
IN THE HIGH COURT OF JUDICATURE AT BOMBAY.
CIVIL APPELLATE SIDE JURISDICTION.

CIVIL APPLICATION NO.2054/2015
IN
FIRST APPEAL (ST) NO.5905/2015

Office Notes, Office Memoranda of Coram, Appearances, court's orders or directions and Registrar's orders	Court's or Judge's orders
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Mr. Nitesh Acharya with Altaf Khan i/b. Moinuddin Khan for the Applicant

Mr. S. R. Tilokchandani i/b. Manilal Kher Ambalal & Co. for the Respondent No.1.

Mrs. M. R. Bhoir for Respondent No.3 and 4.

CORAM : K. K. TATED, J.

DATE : JULY 10, 2015

P.C.:

1. Heard. This Application is preferred by the Plaintiff for condonation of 68 days delay in filing the First Appeal.

2. The learned counsel for the Applicant submits that in the present proceedings, the Trial Court passed decree dated 17/11/2014. Thereafter, immediately they applied for certified copies on 01/12/2014 and same was collected on 04/12/2011. The learned counsel for the Applicant submits that in the meantime, the Agent on behalf of Respondent No.1 contacted the

Applicant for settlement. He submits that thereafter the said Agent informed the Applicant that Respondent No.1 is ready and willing to pay sum of Rs.25 lacs towards their old premises. He further submits that the proposal was not acceptable to the Applicant. Hence, the Applicant challenged the judgment and decree passed by the Trial Court. He submits that there is delay. He submits that some of the Applicants are residing out of Mumbai and for collective decision, it took some time. Hence, there is delay in preferring the present appeal. He submits that the Applicant has good chance of success. He submits that if the delay is not condoned, irreparable loss, harm and injury will be caused to the Applicant. On the basis of this submission, the learned counsel for the Applicant submits that the delay in preferring the Appeal may be condoned.

3. On the other hand, the learned counsel for the Respondent No.1 vehemently opposed the Civil Application. He submits that the Applicant has not shown sufficient cause for condonation of 68 days delay in filing the appeal. He further submits that they never appointed any Agent to discuss with the Applicant for settlement. The Applicant has made false statement in paragraph 3 of the

Civil Application. Hence, the Applicants are not entitled to any relief in the Civil Application.

4. Similarly, advocate for Respondent Nos.3 and 4 also opposed the Civil Application.

5. Heard both sides at length. 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.”

6. Considering the submissions made by the learned counsel for the Applicant and paragraph 3 and 4 of the Application, I am satisfied that the Applicant has made out a case for allowing the present Civil Application. At the same time, the Applicant has to pay cost of Rs.2500/- each to Respondent no.1 and 3 within 3 weeks from today. The learned counsel for the Applicant states that the Applicants are ready and willing to pay the said cost to the Respondent.

7. Hence, the following order:

- a) Delay of 64 days in filing the First Appeal is condoned.
- b) The Applicant has to pay cost of Rs.2500/- each to Respondent no.1 and 3 within 3 weeks from today, failing which the Civil Application shall stand dismissed without further reference to the court.
- c) Civil Application stands disposed off accordingly.

JUDGE