

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

**CIVIL APPLICATION NO.397 OF 2015
IN
APPEAL FROM ORDER (ST) NO.6066 OF 2015**

Dilip Motumal Duhilani

.. Applicant

Vs.

Smt.Sumitra Rani and Ors.
Respondents

..

Ms.Sunita M. Poddar for the applicant

Mr.Ahmad Abdi with Mr.Satyaprakash Sharma with Mr.Ashok Astoria
i/b M/s.Abdi and Co. for respondent nos.2 to 5

CORAM : K.K.TATED, J.
DATED : 28/04/2015

PC:

1 Heard the learned counsel for the parties.

2 This Civil Application is preferred by plaintiff for condonation of 31 days delay in filing Appeal from Order challenging the order dated 16.12.2014 passed by Bombay City Civil Court, Mumbai in Notice of Motion No.3642 of 2008.

3 The learned counsel for the applicant submits that because of financial difficulties and as applicant was not keeping well, there is a

delay in preferring the present Appeal from Order. He submits that applicant has good chance of success in the present proceeding. 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 respondents defendants vehemently opposed the present Civil Application. He submits that applicant has not placed on record any documentary evidence to show that the applicant was facing financial difficulties. Not only that applicant has not placed on record medical certificate to show about his ill-health. Hence, applicant has not made out case for condonation of 31 days delay in filing Appeal from Order.

5 I have heard both the sides at length. In the present proceeding applicant in paragraph 3 and 4 of Civil Application specifically stated that applicant was facing financial difficulties as well as he was not keeping well. Therefore there was delay in filing First Appeal.

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 reason disclosed by the applicant in paragraph 5 of the Civil Application and the law declared by the Apex Court in the matter of *N.Balkrishnan Vs. M. Krishnamurthy (1998) 7 SCC 123 (Supra)*, I am satisfied that applicant has made out a case for allowing Civil Application. Hence following order:

- a. Delay of 31 days delay in filing Appeal from Order is condoned.
- b. Civil application stands disposed off accordingly.
- c. No order as to costs.

(K.K.TATED, J.)