

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

**CIVIL APPLICATION NO.4394 OF 2013
IN
FIRST APPEAL (ST) NO.6848 OF 2013**

The Commissioner Brihan Mumbai
Mahanagar Palika

.. Applicant

vs.

M/s.Apar Corporation P.Ltd.

.. Respondents

Mrs.M.R.Bhoir for the applicant

Ms.Bhairavi Pathak i/b Mr.I.R.Joshi and Co. for the respondent

**CORAM : K.K.TATED, J.
DATED : 17/06/2015**

PC:

- 1 Heard the learned counsel for the parties.
- 2 Advocate for the respondent filed Affidavit-in-Reply. Same is taken on record.
- 3 This application is preferred by Corporation for condonation of 221 days delay in filing First Appeal challenging the judgment and decree dated 7.2.2012 passed by Small Causes Court at Mumbai in Municipal Appeal No.129 of 2009.
- 4 The learned counsel for the respondent vehemently opposed the present Civil Application. She submits that applicant has not shown sufficient cause for condonation of delay. She submits that even the reason disclosed by the applicant in Civil Application cannot be considered as sufficient cause for condonation of inordinate delay of

221 days in filing the First Appeal.

5 I have heard both the sides. It is to be noted that Corporation has to take decision on several levels for filing appeal. The reason disclosed by the applicant in paragraph 4, 5 and 7 shows sufficient cause for delay of 221 days 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 submissions made by the learned counsel for the Applicant, the reason disclosed in the 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 the Applicant has made out a case for allowing the present Civil Application but at the same time applicant has to pay cost to the Respondent. Hence, the following order:

A) Civil Application is allowed in terms of prayer clause (a) which read thus:

“(a) That this Hon'ble Court be pleased to condone the delay of 221 days in filing the present Appeal.”

B) Applicant to pay cost of Rs.5000 to the respondent

or their advocate within four weeks from today, failing which Civil Application shall stand dismissed without referring back to the court.

C) Civil application stands disposed off accordingly.

(K.K.TATED, J.)