

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

***WRIT PETITION NO. 2789 OF 2010***

U.K. Modi,  
Indian Inhabitant, residing at Flat No.10,  
Rockdale Apartment, 16, L.D. Ruparel Marg,  
Mumbai

..Petitioner

Vs.

The Official Liquidator,  
High Court, Bombay  
Being Liquidator appointed in  
Company Petition No. 166/2002 of  
Modistone Ltd. (ML) in liquidation

..Respondent

....

Ms. Ketaki Gadkari, Advocate i/b M/s Khaitan & Jayakar for  
Petitioner.

Mr. Prathamesh Kamat, Advocate i/b Merlyn Monteiro for  
Respondent No.1.

....

***CORAM : N.M. JAMDAR, J.***

***DATED : 5 MAY 2015***

***ORAL ORDER:***

By this petition, the petitioner challenges the order dated 18 February 2010 passed by the Appeal Bench of Small Causes Court allowing the application for condonation of delay in filing the appeal filed by the respondent – Official Liquidator. The delay is of 21 months.

2. The R.A.D. Suit No. 170/2004 was filed by the Official Liquidator appointed in Company Petition No. 166/2002 as Liquidator for M/s Modistone Limited *in liquidation*. The suit was filed by the respondent – official liquidator for recovery of the premises which were in the name of M/s Modistone Limited as landlord of the premises. The suit was dismissed on 16 September 2006. Appeal was thereafter filed with delay of 21 months. It was stated by the Official Liquidator that there was delay because of administrative exigency and that he had attend to various other matters and the liquidation of M/s Modistone Limited was a lengthy process. The Appeal Bench by the impugned order dated 18 February 2010 allowed the application and condoned the delay.

3. The learned Counsel for the petitioner submitted that there is no reason and no particulars are given as why delay occurred and in the circumstances, the delay ought not to have condoned. Firstly it has to be noted that appeal was filed by the Official Liquidator who protects the interest of various creditors and workmen of the company in liquidation. It is these creditors and workmen who would be ultimate sufferers if delay was not condoned. Secondly the reason given by the Official Liquidator that because of various other commitments, the appeal could not be filed in time, is neither an impossible reason nor a improbable one. The Appeal Bench has found this reason to be sufficient enough to condone the delay. The Appeal Bench has accordingly used its

discretionary power and has given the opportunity to Official Liquidator to contest the appeal on merits.

4        The petitioner has invoked the power of superintendence of this Court under Article 227. This jurisdiction is an equitable one and when there is positive use of discretion condoning delay, this Court will not normally interfere. In the case of ***B.T. Purushothama Rai Vs. K.G. Uthaya and Ors.***<sup>1</sup> the Apex Court followed the decision in the case of ***N. Balakrishnan Vs. M. Krishnamurthy***<sup>2</sup> and observed as under:

17.        *On the question of limitation and delay this Court in N. Balakrishnan Vs. M. Krishnamurthy held that the purpose of the Limitation Act was not to destroy the rights. It is founded on public policy fixing the life span for legal remedy for the general welfare. The primary function of a court is to adjudicate between the parties and to advance substantial justice. The object of providing legal remedy is to repair the damage caused as a result of legal injury. If the explanation given does not smack of mala fides or is not shown to have been put forth as a part of a dilatory strategy, the court must show utmost consideration to the suitor.*

18.        *In this context, this Court observed as follows: (N. Balakrishnan case, SCC P.127, para 9)*

*“9. It is axiomatic that condonation of delay is a matter of discretion of the court. Section 5 of the Limitation Act does not say that such discretion can be exercised only if the delay is within a certain limit.*

---

1    (2011) 14 SCC 86

2    (1998) 7 SCC 123

*Length of delay is no matter, acceptability of the explanation is the only criterion. Sometimes delay of the shortest range may be uncondonable due to a want of acceptable explanation whereas in certain other cases, delay of a very long range can be condoned as the explanation thereof is satisfactory. Once the court accepts the explanation as sufficient, it is the result of positive exercise of discretion and normally the superior court should not disturb such finding, much less in revisional jurisdiction, unless the exercise of discretion was on wholly untenable grounds or arbitrary or perverse. But it is a different matter when the first court refuses to condone the delay. In such cases, the superior court would be free to consider the cause shown for the delay afresh and it is open to such superior court to come to its own finding even untrammelled by the conclusion of the lower court.”*

4. Thus following the dicta of the Apex Court, there is no reason made out to interfere with the order of Appeal Bench, especially in the facts and circumstances of the present case. The writ petition therefore cannot be entertained and is dismissed. Rule is discharged.

5. The appeal was filed in the year 2008. The Appeal Bench will give priority to the disposal of the appeal. No costs. The parties shall appear before the Appeal Bench on 15 June 2015. All parties to act on authenticated copy.

**(N.M. JAMDAR, J.)**