

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

CIVIL APPLICATION NO.2216 OF 2014
IN
FIRST APPEAL (ST) NO.12008 OF 2014

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. T. S. Ingale for the Applicant

CORAM : K. K. TATED, J.

DATE : JUNE 10, 2015

P.C.:

1. Heard. None for the Respondent though served.

2. This Application is preferred by the claimant for condonation of 1013 days delay in filing the First Appeal challenging the judgment and award dated 20/04/2011 passed by the MACT, Islampur in MACP No.97/2007. The learned counsel for the Applicant submits that initially, the Applicant handed over the papers along with court fees to the Advocate's clerk in 3rd week of December 2012. Those papers were misplaced by him but the Applicant as well as the Advocate were under impression that the First Appeal is already filed

before this court. He submits that these facts are learnt by the Applicant's Advocate when the Insurance Co. filed the First Appeal in this court.

3. Thereafter, the Applicant immediately applied for another certified copy and filed present appeal. The learned counsel for the Applicant submits that because of mistake on the part of the Advocate, a litigant should not suffer. He submits that the Applicant has good chance of success in the matter. He submits that if delay is not condoned, irreparable loss will be caused to the Applicant.

4. Heard the learned counsel for the Applicant at length. It is to be noted that because of mistake on the part of the Advocate, a litigant should not suffer.

5. In any case, 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 reasons disclosed by the Applicant in paragraph 5 and 6 of the Civil Application and the law laid down by the Apex Court, I am satisfied that the Applicant has made out a case for allowing the Civil Application.

7. Hence, the following order:

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

a) The delay of 1013 days in filing the above said First Appeal seeking enhancement of the judgment and award dated 20/04/2011 passed in MACP No.97/2007 be kindly condoned.

b) Civil Application stands disposed off accordingly.

JUDGE