

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

**CIVIL APPLICATION NO.3249 OF 2012
IN
FIRST APPEAL (ST) NO.13010 OF 2012**

Rajyog Premises Pvt.Ltd.

.. Applicant

Vs.

Shri Suresh Vardichand Mehta and Anr.

.. Respondents

Mr.H.R.Pawar for the applicant

Mr.Nandu V. Pawar for the respondent nos.1 and 2

**CORAM : K.K.TATED, J.
DATED : 20/02/2015**

PC:

1 This application is preferred by plaintiff for condonation of 87 days delay in filing First Appeal challenging the decree dated 5.1.2012 passed by Bombay City Civil Court, Mumbai in S.C.Suit No. 1872 of 2008.

2 The learned counsel for the applicant submits that there was delay on their part in applying for certified copy of judgment and decree. He submits that because of mistake on the part of advocate litigant should not suffer. He further submits that after getting certified copy, they forwarded papers to their legal advisor with regard to further remedy and process. That took some time. He further submits that in

the meanwhile they were trying to pursue the matter with the Mumbai Municipal Corporation for necessary action. Hence, there is a delay in preferring First Appeal. He submits that they have good chance of success in the present proceeding. He submits that if the delay is not condoned, irreparable loss, harm and injury will be caused to the Applicant. He submits that the plaintiff filed the proceeding in the trial court directing Corporation to take appropriate action against unauthorised construction carried on by respondents defendants. Hence, in the interest of Justice, this Hon'ble Court be pleased to condone the delay in filing First Appeal and decide the matter on its own merits.

3 On the other hand, the learned counsel for the respondents defendants vehemently opposed the present Civil Application. He filed Affidavit-in-Reply dated 18.2.2015. The learned counsel for the defendants submits that the applicant has not disclosed the true facts. They failed to disclose name of department in which matter they were pursuing the matter with the Mumbai Municipal Corporation for necessary action. He further submits that applicant has not shown when the matter was referred to the legal advisor and when legal advisor gave advise to prefer the present First Appeal. Hence, there is no substance in the present Civil Application. Same be dismissed with costs.

4 I have heard both the sides at length. It is to be noted that in the present proceeding because of mistake on the part of advocate there was delay in applying for certified copies of judgment and decree.

Thereafter the applicant took some time to take legal advise from their legal advisor.

5 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 above mentioned facts and the law declared by the Apex Court in the case of ***N.Balkrishnan Vs. M. Krishnamurthy***, I am of the opinion that the applicant has made out a case for allowing the Civil Application but at the same time they have to pay cost of Rs.750/- to the respondents. Hence, following order:

- a) Delay of 87 days in filing First Appeal is condoned.
- b) Applicant to pay cost of Rs.750/- to the respondent or deposit the same in the Registry of this Court 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.)