

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL APPLICATION NO.493 OF 2014
IN
CIVIL REVISION APPLICATION St. NO. 16819 OF 2014**

**Hradyakant G. Hariyani
Vs.
Narayan B. Shetty & Ors.**

**..Applicant
..Respondents**

Mr. Chandrakant Chavan for the Applicant

**CORAM : R. M. SAVANT, J.
DATE : 30th NOVEMBER, 2015**

P.C.

1 The above Civil Application has been filed seeking condonation of delay of 5 years and 41 days in filing the above Civil Revision Application. The said delay is sought to be justified on the basis of the averments made in paragraph 8 of the above Civil Application. Since the averments made in paragraph 8 are the only justification for the said delay of 5 years and 41 days, it would be gainful to reproduce the said paragraph for the sake of ready reference :

“The Applicant states that after passing of impugned judgment and decree by the Appellate Court the Applicant was facing serious health problem and was not in a position to take decision in the matter the applicant is annexing herewith copies of medical reports. The Applicant further states that because of health problem and financial problem now he is residing at the Manav Seva Sangh at Sion which institution is

providing shelter to the senior citizens. Hereto annexed and marked Exhibit "A" colly are copies of medical reports and Exhibit "B" is the copy of the certificate issued by Shree Manav Seva Sangh. The Applicant states that the delay which is caused in filing the above Civil Revision Application is not intentionally or deliberately but due to health problem and due to financial problem."

2 A reading of the said paragraph therefore discloses that it is the case of the Applicant that on account of serious health problems, the Applicant was not in a position to take the decision in the matter i.e. the challenge to the decree of dismissal passed by the Appellate Bench of the Small Causes Court. A perusal of the documents annexed to the above Civil Application disclose that the Applicant has been issued a certificate dated 6-12-2008 by Dr. Talaria who is practicing in Rajkot that he has been suffering from osteoporosis with severe back pain. It further states that he has been advised rest for 6 to 8 weeks. To the said application the prescription of one Dr. Avinash Maru also practicing at Rajkot has been annexed which prescription shows the medicines which has been prescribed for the Applicant. The Applicant has thereafter annexed the medical investigation reports namely pathological which are between the dates 19-10-2011 to 22-4-2014. The said delay is therefore sought to be justified on the basis that it is on account of his health problem that the Applicant could not file the instant Civil Revision Application within time and that the delay of 5 years and 41 days has occurred in filing the same.

3 It is required to be noted that in so far as the suit premises are concerned, they are shop premises admeasuring around 200 sq.ft. in Mumbai wherein a tea stall is being run by the Respondent No.1(a) herein. Both the Courts below have refused to pass a decree in favour of the Applicant who claimed to be the tenant of the said premises. The Respondent No.1(a) being his sub-tenant. The decree on the ground of bonafide requirement has been refused to be passed by the Courts below on the ground that greater hardship would be caused to the Respondent No.1(a) if the decree was passed then the Applicant if the decree was refused. As indicated above, the decree of dismissal passed by the Appellate Bench of the Small Causes Court is dated 8-12-2008 though the documents as aforesaid have been annexed to the above Civil Application. It is not the case of the Applicant that he was immobile or his health problem was a debilitating one. The material produced on record does not disclose that the Applicant could not have taken steps to file the Civil Revision Application for the period of 5 years and 41 days.

4 The Learned Counsel appearing for the Applicant sought to make submissions on merits and would contend that if the delay is not condoned then it may result in meritorious matter being thrown on a technicality.

5 Per contra the Learned Counsel for the Respondents would support the impugned order. It was the submission of the Learned Counsel that having

regard to the material placed on record on the basis of which the condonation of delay of 5 years and 41 days is sought. The said material does not constitute sufficient cause. The Learned Counsel would also contend that both the Courts below have concurrently held against the Applicant.

6 Having heard the Learned Counsel for the parties, I have considered the rival contentions. The issue which arises for consideration is whether sufficient cause has been shown by the Applicant for seeking condonation of the said huge delay of 5 years and 41 days in filing the above Civil Revision Application. Though it is well settled in matters of condonation of delay a highly pedantic approach should be eschewed and an approach which further the cause of substantial justice should be adopted. However, one cannot loose sight of the fact that whilst considering the applications for condonation of delay a judicious approach has to be adopted. If considered in the said light, the reasons mentioned in the above Civil Application as also the material placed on record hardly justify the said huge delay of 5 years and 41 days in filing the above Civil Revision Application. As held by the Apex Court one of the consideration which is required to be borne in mind by the court whilst adjudicating an application for condonation of delay is the prejudice that is likely to be caused to the other side. Hence apart from the fact that the reasons mentioned in the Civil Application hardly make out a case for condonation of delay. The fact that great prejudice would be caused to the

Respondents at this length of time and therefore cannot be lost sight of. The Learned Counsel appearing on behalf of the Applicant sought to place reliance on the judgment of the Apex Court in the matter of **Naubat Ram Sharma Vs, Additional District Judge II, Moradabad and Ors.**¹ In the said judgment, the matter proceeded on the basis of a concession made by one of the contesting parties that the proceedings be remanded back to the Trial Court to be heard on merits. Such is not the case in the instant matter. Hence the said judgment would have no application.

7 In that view of the matter no relief can be granted to the Applicant, the Civil Application is accordingly rejected.

8 In view of the rejection of the above Civil Application, the Civil Revision Application which suffers from the said huge delay does not survive and to accordingly stand disposed of as such.

[R.M.SAVANT, J]

¹ AIR 1987 SC 1352