

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

**CIVIL APPLICATION NO.2338 OF 2014
IN
FIRST APPEAL (ST). NO.18187 OF 2014**

The Mogaveera Co-operative Bank Ltd. .. Applicant

Vs.

Tahir Ahmed Khan .. Respondent

Mr.S.A.Oak i/b M/s.Mahesh Menon and Co. for the applicant

Mr.Prem Sood for the respondent

**CORAM : K.K.TATED, J.
DATED : 17/07/2015**

PC:

1 Heard the learned counsel for the parties.

2 This application is preferred by defendant for condonation of one year one year and 117 days delay in filing First Appeal challenging the decree dated 6.2.2013 passed by Bombay City Civil Court at Bombay in Suit No.6887 of 2003 (High Court Summary Suit No.2321 of 2003) holding that the applicant defendant is liable to pay sum of Rs.2,64,100/- with 18% interest p.a. to the respondent plaintiff.

3 The learned counsel for the applicant submits that initially the respondent plaintiff filed the suit in the High Court being Summary

Suit No.2321 of 2003 on the Original Side. That time, plaintiff preferred Summons for Judgment. In that Summons for Judgment, defendant appeared and filed their affidavit in reply. After hearing both the sides, this Hon'ble Court granted unconditional leave to the defendant to defend the suit. He submits that the said matter was transferred to the Bombay City Civil Court at Bombay.

4 The learned counsel for the defendant submits that when the matter was transferred to the Bombay City Civil Court, no one appeared on behalf of them. He submits that their earlier Advocate neither attended the matter nor informed the bank about the transfer of the suit nor taken any care to appear. Not only that even the written statement was not filed by the bank Advocate.

5 The learned counsel for the defendant submits that the bank learnt about the decree passed by the Trial Court only in the month of June 2014 when the plaintiff along with the bailiff attended their branch for attachment of the property. As soon as they learnt about the decree passed by the Trial Court in the month of June, 2013, they immediately applied for certified copy on 26.6.2014. The same was ready for delivery on 30.6.2014 and thereafter, the applicant bank filed First Appeal in this court on 8.7.2014 along with Civil Application for condonation of delay as well as stay. He submits that pursuant to the order passed by this court in Civil Application for stay they already deposited entire decreetal amount in this court.

6 The learned counsel for the applicant defendant submits that in the interest of Justice, this Hon'ble Court be pleased to condone the delay of 1 year and 117 days in filing First Appeal. He submits that

because of mistake on the part of their Advocate, applicant defendant should not suffer. He submits that as soon as they learnt about the decree passed by Trial Court in the month of June, 2014 they immediately filed application for certified copy and obtained the same and file First Appeal in this court. He submits that they have good chance of success in the present matter. He submits that if delay is not condoned, irreparable loss and injury will be caused to the applicant.

7 On the other hand, the learned counsel for the respondent plaintiff vehemently opposed the present Civil Application. He filed affidavit in reply. Same is on record. He submits that actually there is a delay of 523 days and not as stated by the applicant in their application. He submits that applicant has not shown sufficient cause for condonation of inordinate delay of 523 days. The learned counsel for the plaintiff submits that at present nothing survives in the present proceeding. He submits that bank has already deposited entire decretal amount in this court. He further submits that the bank property is already attached by the plaintiff in Execution Proceeding. He submits that for want of sufficient cause for condonation of inordinate delay of 523 days, this Hon'ble Court be pleased to dismiss the present Civil Application with costs.

8 I have heard both the sides at length. Before considering the Civil Application for condonation of delay, it should 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 ut 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.”

9 In the present proceeding, earlier the plaintiff preferred Summons for Judgment when the matter was pending in the High Court. That time the defendant appeared through their Advocate and filed their affidavit in reply defending Summons for Judgment. This court granted unconditional leave to the defendant to defend the Summary Suit. When the matter was transferred to the Bombay City Civil Court on the ground of pecuniary Jurisdiction, no one appeared on behalf of defendant in the Trial Court. Because of mistake on the part of Advocate, defendant bank should not suffer. In any case the defendant bank has already deposited entire decretal amount in this court as per the order passed by this court in Civil Application for stay.

10 Considering the submissions made by the learned counsel for the applicant, the averments made in Civil Application and as per the law laid down by the Apex Court in the matter of ***N.Balkrishnan Vs. M. Krishnamurthy***, I am satisfied that the applicant has made out a case for allowing Civil Application but at the same time, applicant to pay cost of Rs.7,500/- to the respondent plaintiff. Cost to be paid within two weeks from today. Hence, following order:

- a) Delay in filing First Appeal challenging the decree dated 6.2.2013 passed by Bombay City Civil Court at Bombay in Suit No.6887 of 2003 is condoned.
- b) Applicant defendant to pay cost of Rs.7500 to the respondent plaintiff or their Advocate within two weeks from today, failing which Civil Application shall stand dismissed

without referring back to the court.

- c) Civil Application is disposed of accordingly.
- d) If cost is paid within stipulated time and all office objections are removed in First Appeal, office is directed to place First Appeal along with Civil Application for stay on board for admission on 23.8.2015.
- e) Registry is directed to invest entire amount if it is not done, in fixed deposit of any nationalised bank initially for a period of one year and same be continued till further orders.

(K.K.TATED, J.)