

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

CIVIL APPLICATION NO.896 OF 2014
IN
APPEAL FROM ORDER (ST) NO.18496 OF 2014

Nitinkumar M. Parekh

...Applicant

V/s.

Deepak Fertilizers and Petrochemicals Corpn. Ltd.

...Respondent

Mr. Nitinkumar M. Parekh Applicant in person.

Ms. Priyanka Bagat i/b. Deven Dwarkadas for the Respondent No.1.

Mr. H. S. Khokhawala with Tanya D'Souza i/b. Nankani Associate for
Respondent No.2.

CORAM: K.K. TATED, J.

DATED : APRIL 21, 2015

PC. :

1. Heard the Applicant in person and the learned counsel for the Respondents. Office note shows that the Civil Application stood abated against Respondent Nos.10, 17 and 34 vide order dated 05/11/2014 passed by the Registrar (Judicial-II) of this court.

2. This Application is preferred by Defendant No.4 for condonation of 49 days delay in filing the Appeal from Order challenging the order dated 07/02/2014 passed by the Bombay City Civil Court, Mumbai in Notice of Motion No.1363/2013 in S.C.Suit No.2513/2001. The Applicant party in person submits that he applied for certified copies on 10/02/2014 and same was collected on 26/02/2014. He submits that the Appeal from Order is filed on 09/06/2014. He submits that during

this period he was not keeping well and therefore there is delay in preferring the Appeal from Order. He submits that in the interest of justice this Hon'ble Court be pleased to condone the delay in filing the Appeal from Order. He submits that if delay is not condoned irreparable loss and injury will be caused to the Applicant.

3. On the other hand the learned counsel for the Respondent No.1 submits to the orders of the court.

4. The learned counsel for the Respondent No.2 vehemently opposed the Civil Application. He submits that there is delay of more than 100 days in filing the Appeal from Order. He submits that though the Applicant stated in Civil Application that he has filed the Appeal from Order on 09/06/2014, the status of the Appeal from Order on official website of this court shows the date of filing Appeal from Order is 11/07/2014. He submits that the Applicant party in person himself argued the matter in the Trial Court therefore the reason given by the Applicant in the Civil Application is not sufficient for condonation of 100 days delay in filing the Appeal from Order. Hence, there is no substance in the Civil Application. Same be dismissed with costs.

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 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.”

6. In the present proceedings, the reasons given by the Applicant in Civil Application are that he was not keeping well during the relevant period etc. It is to be noted that though the Respondents are duly served they have not filed any affidavit-in-reply to oppose the Civil Application. The objection raised by the advocate for Respondent No.2 for allowing the Civil Application cannot sustain in view of the Apex Court judgment in the matter of **N.Balkrishnan** (supra).

7. Considering the submissions made by the Applicant party in person, the reasons disclosed in 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 present Civil Application.

8. Hence, the following order:

- a) Delay in filing the Appeal from Order is condoned.
- b) Civil application stands disposed off accordingly.

(K.K. TATED, J.)