

YBG

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.1164 OF 2014
IN
FIRST APPEAL ST.NO.24847 OF 2013

Shivaji Nivrutti Kharade & Anr.	...	Applicants
V/s.		
D.C.Gupta and Anr.	...	Respondents

Mr.VA.Shastry for applicants
Mr.Rahul Mehta i/b. KMC Legal for respondent No.2.

CORAM : K.K.TATED, J.
DATED : 13th March 2015.

PC.

1] Heard the learned Counsel for the applicant and learned Counsel for respondent No.2. Though the respondent No.1 is duly served, no one appears on his behalf.

2] This application is preferred by the claimants for condonation of 336 days delay in filing first appeal challenging the judgement and award dated 30th April 2012 passed by MACT Thane in Petition No.860 of 2005.

3] Learned Counsel for respondent No.2 vehemently opposed the present civil application. He submits that the applicant has not shown

sufficient cause for condonation of delay.

4] Considering the submissions made by the learned Counsel for the applicant, the averments made in paras 6 and 9 of civil application and the observations of Supreme Court in the matter of N.Balkrishnan Vs. M. Krishnamurthy (1998) 7SCC 123, in paras 11, 12 and 13 to the following effect:-

“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 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 such remedy. Unending period of 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 Vs. Kuntal Kumari*, 1969 S.C. 575 and *State of West Bengal Vs. The Administrator, Howrah Municipality*, A.I.R. 1972 S.C. 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.”

I am satisfied that the applicant has made out a case for allowing the civil application.

5] The civil application is accordingly allowed in terms of prayer clause (a), which reads as under:-

(a) That, this Court may be pleased to condone the delay of 336 days caused in filing the first appeal for the reasons mentioned in the memo of this civil application.”

(K.K.TATED, J)

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DATED : 13th March 2015.

P.C.

1] Not on Board. At the request of the appellant the matter is taken on board. This appeal is preferred by the claimants, challenging the judgement and award dated 30th April 2012 passed by the MACT in MACT Petition No.860 of 2005 for enhancement of compensation.

2] Admit.

3] The appellant to file private paper book within one year, failing which the appeal shall stand dismissed without further reference back to the court.

4] Printing and filing of Roznama dispensed with.

5] Considering the facts and circumstances of the present case, hearing of first appeal is expedited. Learned Counsel waives service for respondent No.2.

(K.K.TATED, J)