

FARAD CONTINUATION SHEET
IN THE HIGH COURT OF JUDICATURE AT BOMBAY.
CIVIL APPELLATE SIDE JURISDICTION.

CIVIL APPLICATION NO.3613 OF 2014
IN
FIRST APPEAL (ST) NO.24447 OF 2014

Office Notes, Office Memoranda of Coram, Appearances, court's orders or directions and Registrar's orders	Court's or Judge's orders
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Mr. A. S. Vidyarthi for the Applicant
Mr. S. M. Payak for the Respondent Nos.1,2 and 4.
Mr. G. H. Keluskar i/b. D. H. Keluskar for Respondent No.3.

CORAM : K. K. TATED, J.
DATE : APRIL 17, 2015

P.C.:

1. Heard. This Application is preferred by the Insurance Co. for condonation of 130 days delay in filing the First Appeal challenging the judgment and award dated 26/08/2013 passed by the MACT Mumbai in claim Application No.2966/2008.

2. The learned counsel for the Applicant submits that the Applicant shifted their office from Wadala to Goregaon and at that time, they misplaced their papers and therefore there is delay in preferring the appeal. He submits that the Applicant has good chance of success in the matter.

He submits that the Tribunal awarded compensation at higher side. He submits that if delay is not condoned, irreparable loss will be caused to the Applicant. The Applicant has good chance of success in the matter. Hence, the Civil Application may be allowed.

3. On the other hand, the learned counsel for the Respondent Nos.1, 2 and 4 vehemently opposed the present Civil Application. They filed the Affidavit-in-Reply dated 25/11/2014. The learned counsel for the Respondent submits that the Applicant in paragraph 2 of the Civil Application made a false statement that recently their office was shifted from Wadala to Goregaon. He submits that the Applicant's office was shifted to the present location at Goregaon more than a year ago and the certified copy of the judgment and award was received by the Applicant on 03/02/2015. He submits that when the certified copy was received by the Applicant at that time, the office had already shifted to Goregaon. As the Applicant made incorrect statement in the Civil Application for condonation of delay, they are not entitled to any relief from this Hon'ble Court. Hence, the Civil Application be dismissed with costs.

4. The learned counsel for the Respondent No.3 submits to the order of the Court.

5. In the present proceedings, there is delay of 130 days in filing the appeal. In paragraph 2 of the Civil Application, the Applicant stated that while shifting their office from Wadala to Goregaon, they misplaced their papers, therefore, there is delay in filing the appeal. It is to be noted that the Applicant has not stated any specific date on which they have shifted their office from Wadala to Goregaon.

6. 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.”

7. Considering the submissions made by the learned counsel for the Applicant, the averments made in the Application, I am of the view that the objection raised by the Respondent Nos.1 and 2 cannot be sustained to dismiss the present Civil Application. At the same time, the Respondent Nos.1 and 2 are entitled to total cost of Rs.5000/-. Considering the above mentioned facts 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:

- i) Delay of 130 days in filing the Civil Application is condoned.
- ii) The Applicant to pay cost of Rs.5000/- to the Respondent Nos.1 and 2 within 4 weeks from today.
- iii) Civil Application stands disposed off accordingly.

JUDGE