

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

CIVIL APPLICATION NO.4099 OF 2014
IN
FIRST APPEAL (ST) NO.25638 OF 2014

Municipal Corporation for Greater Mumbai ...Applicant

V/s.

Sandeep Madhukar Gijare & Anr. ...Respondents

Mr. Madhukar Kulkunkar with Namita Mestry i/b. Navdeep Vora &
Associates for the Applicant.
Mr. Sagar Seth for Respondent No.1 and 2.

CORAM: K.K. TATED, J.
DATED : FEBRUARY 4, 2015

PC. :

1. Heard the learned counsel for the parties. This Application is preferred by the original opponent for condonation of 79 days delay in filing the appeal challenging the judgment and award dated 17/01/2014 passed by the MACT at Mumbai in MACP No.787/2006 awarding compensation of Rs.37,34,446/- with 7.5% p.a. from the date of Application till its realisation to the Respondent claimant.

2. The learned counsel for the Applicant placed on record additional compilation of documents in support of the present Civil Application. The learned counsel for the Applicant submits that before filing the appeal, they had to take approval from several departments and in that process there is delay of 79 days in filing the appeal. He

further submits that if delay is not condoned, irreparable loss, harm and injury will be caused to the Applicant. He submits that the Tribunal has awarded the compensation in favour of the Respondent claimant at a higher side. He submits that the Applicant has good chance of success. On the basis of this submission, the learned counsel for the Applicant submits that this Hon'ble Court be pleased to condone the delay and matter be heard on merits.

3. On the other hand, the learned counsel for the Respondent claimants vehemently opposed the present Civil Application. He filed Affidavit-in-Reply dated 01/02/2015. The learned counsel for the Applicant submits that the Applicant has not shown sufficient ground for condonation of inordinate delay of 79 days in filing the appeal. He further submits that the Applicant has not shown, which Authority has taken time for taking decision to file the appeal in this court. In support of his contention, the learned counsel for the Respondent relies on judgment of Delhi High Court in the matter of *New India Assurance Co. Ltd. Vs. Surinder Pal and Anr.* 2011 ACJ 1168, particularly paragraph 7 and 8. He also relies on the judgment of the Sikkim High Court in the matter of *Branch Manager, New India Assurance Co. Ltd. Vs. Jasu Subba and Ors.* 2012 ACJ 988 particularly paragraph 6.

4. On the basis of this submission and the authorities cited above, the learned counsel for the Respondent submits that the Applicant failed to show sufficient cause for condonation of 79 days delay. Hence, there is no substance in the present Civil Application. Same be

dismissed with costs.

5. It is to be noted that the present appeal is preferred by the Municipal Corporation of Greater Mumbai. It is a fact that before filing any appeal on behalf of the Municipal Corporation, they have to take approval from several Authorities.

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. On the basis of the submission made by the learned counsel for the Applicant and the law declared by the Apex Court in the above mentioned authority, I am of the opinion that the Applicant has made out a case for allowing the same.

8. At the same time, the Applicant shall pay cost of Rs.750/- to the Respondent or their Advocate within four weeks from today.

8. Hence, the following order.

A) Civil application is allowed in terms of prayer clause (a) which reads thus:

“(a) the delay of 81 days in filing the above Appeal from the judgment and order dated 17/01/2014 passed by the MACT Mumbai be condoned and the above Appeal be heard on merits.

B) the Applicant shall pay cost of Rs.750/- to the Respondent or their Advocate within four weeks from today, failing which the Civil Application shall stand dismissed without further reference to the court.

C) Civil application stands disposed off accordingly.

(K.K. TATED, J.)