

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

CIVIL APPLICATION NO.3416 OF 2014
IN
FIRST APPEAL (ST) NO.25831 OF 2014

Prabhakar B. Amolik

...Applicant

V/s.

Rudolf Woodman & Ors.

...Respondents

Mrs. V. V. Thorat i/b. Prachi Tatake for the Applicant.

Mr. A. M. Vernekar with Samarth Pai for the Respondent Nos.1 to 5.

Mr. I. V. R. Peter D'Cruz – Intervener in Civil Application

No.3144/2014.

CORAM: K.K. TATED, J.

DATED : JUNE 18, 2015

P.C. :

1. Heard the learned counsel for the parties. This Application is preferred by the Defendant for condonation of 180 days delay in filing the First Appeal challenging the judgment and decree dated 27/02/2014 passed by the Bombay City Civil Court, Mumbai in suit No.7459/2001 (HC Suit No.2570/2001) directing the Defendant to handover vacant and peaceful possession of the suit flat and also pay sum of Rs.5,04,000/- with interest thereon @ 18% p.a.

2. The learned counsel for the Applicant submits that initially, the Respondent Plaintiff filed suit No.2570/2001 on original side of this court. Thereafter it was transferred to the Bombay City Civil Court,

Mumbai in view of enhancement of pecuniary jurisdiction. He submits that when the matter appeared before the Trial Court, none appeared on behalf of the Applicant. She submits that the Applicant learnt about the impugned judgment and decree passed by the Trial Court for the first time when the Applicant received a letter dated 14/08/2014 from the office of the Court Receiver. Thereafter the Applicant immediately gave a letter dated 28/08/2014 requesting the office of the Court Receiver to provide a copy of order, as the Applicant did not have any knowledge about the order passed by the Bombay City Civil Court, Mumbai. She submits that thereafter the Applicant contacted his Advocate and applied for certified copies and preferred the appeal. The learned counsel for the Applicant submits that because of mistake on the part of the advocate, the Applicant should not suffer. She submits that as soon as the Applicant learnt about the impugned judgment and decree passed by the Bombay City Civil Court, Mumbai and from the letter dated 14/08/2014 from the Court Receiver, the Applicant made an Application for certified copies and filed the present appeal on 22/09/2014. She further submits that the Applicant has good chance of success in the matter and if delay is not condoned, irreparable loss, harm and injury will be caused to the Applicant.

3. On the other hand, the learned counsel for the Respondent Plaintiff vehemently opposed the Civil Application. He submits that the Applicant has not shown sufficient cause for condonation of inordinate delay of 180 days in filing the First Appeal. He submits that even the reasons given by the Applicant do not disclose sufficient cause. He submits that it is the duty of the Applicant or their Advocate to take

proper steps when the matter was transferred from this court to the Bombay City Civil Court, Mumbai. He submits that for want of sufficient cause, this Hon'ble Court be pleased to dismiss the Civil Application.

4. Heard both sides at length. In the present proceedings, there is delay of 180 days which is because of mistake on the part of the Advocate. When the matter was transferred from this court to the Bombay City Civil Court, Mumbai, it was the duty of the Advocate to make proper enquiry and appear in the matter. Because of mistake on the part of the Advocate, the Applicant should not suffer.

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 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."

6. Considering the fact that the Applicant learnt about the impugned judgment and decree for the first time when they received letter dated 14/08/2014 from the Court Receiver and the Applicant filed the First Appeal immediately thereafter in the month of September 2014, I am satisfied that the Applicant has made out a case for allowing the Civil Application. At the same time, the Applicant has to pay cost of Rs.5000/- either to the Respondent or their Advocate or deposit in the

Registry of this court within 4 weeks from today, failing which the Civil Application shall stand dismissed without further reference to the court.

7. Hence, the following order.

a) Civil Application allowed in terms of prayer clause (a) which reads thus:

“(a) That by an order of this Hon'ble Court delay of 180 days caused in filing the present First Appeal be kindly condoned. “

(b) The Applicant shall pay cost of Rs.5000/- either to the Respondent or their Advocate or deposit in the Registry of this court, within 4 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.)