

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

**CIVIL APPLICATION NO. 1246 OF 2014
IN
APPEAL FROM ORDER (ST.) NO. 26469 OF 2014**

Fullmoon Co-Operative Housing Society Limited .. Applicant.
V/s.
The Municipal Corporation of Gr. Mumbai & Anr. .. Respondents

Mr. Atul Singh for the applicant.
Mr. Khalid Khimani i/b Yashpal Jain for the respondent nos. 2A, 2(G).

**CORAM : K. K. TATED, J.
DATED : 03/08/2015.**

PC.:

. Heard learned Counsel for the parties.

2 This application is preferred by plaintiff for condonation of 6 days delay in filing Appeal from Order challenging the order dated 23.08.2014 passed by Bombay City Civil Court at Bombay in Notice of Motion no. 1691 of 2008 in L.C. no. 1217 of 2008.

3 The learned Counsel for the respondent nos. 2A filed their affidavit-in-reply dated 11.12.2014 and vehemently opposed the present Civil Application. He submits that if sufficient cause is not shown for condonation of delay, court should not entertain the application. In support of this, he relies on Judgment in the matter of *Basawaraj & Anr. V/s. Special Land Acquisition Officer, reported in (2013) 14 Supreme Court Cases 81*. Paragraph 15 of the said Judgment reads thus:

“15. The law on the issue can be summarised to the effect that where a case has been presented in the court beyond limitation, the applicant has to explain the court as to what was the "sufficient cause" which means an adequate and enough reason which prevented him to approach the court within limitation. In case a party is found to be negligent, or for want of bonafide on his part in the facts and circumstances of the case, or found to have not acted diligently or remained inactive, there cannot be a justified ground to condone the delay. No court could be justified in condoning such an inordinate delay by imposing any condition whatsoever. The application is to be decided only within the parameters laid down by this Court in regard to the condonation of delay. In case there was no sufficient cause to prevent a litigant to approach the court on time condoning the delay without any justification, putting any condition whatsoever, amounts to passing an order in violation of the statutory provisions and it tantamounts to showing utter disregard to the legislature.”

4 The learned Counsel for the respondent no.2A submits that in the present proceeding, the applicant has not shown sufficient cause for condonation of delay. Hence, there is no substance in the present Civil Application and same to be dismissed with costs.

5 I heard both the sides at length. It is to be noted that the authority relied by the respondent no.2A in which the delay was 5 & ½ years in filing the appeal under Section 54 of Land Acquisition Act, 1894. The only explanation offered by appellant in that case was that not keeping well. Whereas, in the present proceeding, the applicant has shown sufficient cause.

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 learned counsel for the applicant, averments made in civil application and the law declared by the Apex Court in the matter of ***N.Balkrishnan (Supra)***, I am satisfied that applicant has made out the case for allowing the civil application.

8 Hence, the following order.

- a) The delay of 6 days in filing Appeal from Order is condoned.
- b) Office is directed to registered the Appeal from Order, if all office objections are removed by the Appellant.
- c) Civil Application stands disposed of accordingly.

(K.K.TATED, J.)