

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION
CIVIL APPLICATION NO.46 OF 2015
IN
APPEAL FROM ORDER NO.74 OF 2015

A. P. Unwalla & Ors.

...Applicants

V/s.

The Board of Trustees of the Mumbai Port Trust

...Respondent

Mr. Vineet B. Naik, Senior Advocate i/b. Darshan Mehta with Sadhavi Shah i/b. M/s. Dhruve Liladhar & Co. for the Applicants.
Mr. Vishal Talsania i/b. Motiwala & Co. for the Respondent.

CORAM: K.K. TATED, J.
DATED : FEBRUARY 9, 2015

PC. :

1. Heard the learned senior counsel for the Applicants/Plaintiffs and the learned counsel for the Respondents/Defendants.

2. This Application is preferred by the Plaintiffs for condonation of 253 days delay in filing the Appeal from Order. The learned Senior counsel for the Applicants submits that the Trial Court dismissed their Notice of Motion No.4242/2013 on 17/01/2014 for restoration of Short Cause Suit No.7464/2001. He submits that during pendency of the Notice of Motion, they received letter dated 19/12/2013 from their Solicitor that the Notice of Motion was on board on 18/12/2013 and the same was adjourned, as the advocate for the Respondent sought time for filing their Affidavit-in-Reply. It was also stated in the said letter that they would keep the Applicants informed of the further

developments.

3. He further submits that thereafter they received letter dated 12/08/2014 from the Respondent and at that time, they learnt that Notice of Motion No.4242/2013 preferred by them was dismissed. Thereafter immediately they enquired and applied for certified copies on 07/10/2014. The certified copies were received on 08/10/2014 and they filed the present appeal on 01/11/2014. The learned Senior Counsel for the Applicants submits that the Trial Court's Advocate failed to inform the impugned order to the Applicant immediately. He submits that because of mistake on the part of an Advocate, a litigant should not suffer. He further submits that the Applicants have good chance of success in the appeal. He further submits that if the delay is not condoned, the Applicants will suffer irreparable loss and injury.

4. On the other hand, the learned counsel for the Respondent vehemently opposed the Civil Application. They filed their Affidavit-in-Reply. He further submits that the Applicants have not shown sufficient cause for condonation of delay in filing the Appeal from Order. He further submits that in the Trial Court, the Applicants remained absent on several occasions. Therefore, there is no substance in the Civil Application. Same to be dismissed with costs.

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. In the present proceedings, because of mistake on the part of the advocate for the Applicants, there was delay in preferring the appeal. Considering the reasons disclosed by the Applicants in the Civil Application and in view of the law laid by the Apex Court in the matter of N. Balkrishna (supra), I am satisfied that the Applicants have made out a case for allowing the Civil Application. At the same time, the Applicants shall pay cost of Rs.2500/- to the Respondent within 2 weeks from today, failing which the Civil Application shall stand dismissed without further reference to the court.

7. Hence, the following order:

- a) Delay of 253 days in filing the Appeal from Order is condoned.
- b) The Applicants shall pay cost of Rs.2500/- to the Respondent within 2 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.)