

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 10331 OF 2014

ICPA Health Products Ltd.,
through its Authorised Signatory
D. Ashok Kumar (G.M. - Finance) .. Petitioner

vs.

M.C.G.M., through
Dy. Assessor and Collector
(Octroi), Mumbai .. Respondent

Mr. Sanjay Haritwal for the Petitioner.
Ms Pallavi Thakar for BMC-Respondent.

CORAM : M. S. SONAK, J.
DATE : 27 January 2015.

P.C. :-

1] Rule. With the consent of learned counsel for the parties, Rule is made returnable forthwith.

2] This petition is directed against the order dated 11 September 2014 passed by the Court of Small Causes Court at Bombay condoning the delay in filing the written statement and thereby taking the written statement of the respondent-Corporation on record.

3] Learned counsel for the petitioner submitted that wayback on 5 August 2006, the matter was fixed for making an ex-parte order

against the respondent-Corporation. Thereafter the matter appeared before the Court on several occasions, however, the respondent neither filed any written statement, nor pursued the matter with diligence. Learned counsel submitted that the reasoning adopted by the Small Causes Court at Bombay to condone the delay is quite falacious, inasmuch as it is inconceivable that the petitioner was absent or lethargic in the matter of pursuing the appeal. In any case, the fact that the appeal was not dismissed for non-prosecution, clearly establishes that the petitioner was diligent in matter of pursuing the appeal. Learned counsel also submitted that the reasons for condonation of delay did not make out a case of sufficient cause and further the decisions of the Supreme Court, upon which the petitioner had placed reliance have not been considered by the Small Causes Court at Bombay in their proper perspective.

4] Having heard the learned counsel for the parties and perused the impugned order as well as other material on record, I see no reason to interfere with the impugned order, whereby the Small Causes Court at Bombay has exercised the discretion to condone the delay in filing of written statement. The circumstance that the order

was made on 5 August 2006, is by no means a ground not to condone delay and permit filing of written statement. Admittedly, the appeal was pending on the date when the application was moved and leave applied to file written statement. The reasons set out for condonation of delay are by no means extraneous or irrelevant. The Corporation, in its application and the affidavit in support thereof explained in details administrative difficulties, on account of which the written statement remained to be filed. The impugned order itself records that even the appellant had remained absent in the proceedings right from the beginning and the Small Cause Court at Bombay was constrained to make an order of 30 January 2014 for issuance of notice to the appellant. The appeal is of the year 2006. The records reveal that both parties had not pursued the matter with diligence.

5] In matters of condonation of delay, a liberal approach is warranted, particularly when the explanation furnished is not *malafide*. In the present case, the Corporation has gained or would have gained nothing by either not filing a written statement or delaying the proceedings before the Appeal Court.

6] Ultimately, the Small Causes Court at Bombay had exercised its discretion in the matter. Such exercise of discretion is neither vitiated by perversity nor non-application of mind. This is not a case where irrelevant considerations have been taken into account. As has been held, by the Supreme Court in case of *N.Balakrishnan vs. M. Krishnamurthy*¹, that length of delay is no matter acceptability of the explanation is the only criteria. In every case of delay, there may be some lapse on the part of the litigant concerned. That alone is not sufficient to turn down his plea and to shut the door against him. If the explanation offered does not smack of *mala fides* or is not put forth as a part of dilatory strategy, the Court must show utmost consideration to the suitor. In a case where the Court has positively exercised its discretion and condoned the delay, normally the Constitutional Court should not interfere with such finding, unless it is established that there is perversity or unreasonableness. Further the matter is different when the first Court refuses to condone the delay and in such case, the Constitutional Court would be free to consider the cause shown for the delay afresh and comes to its own finding even untrammelled by the conclusion of the lower Court.

1 (1998) 7 SCC 123

7] The decisions upon which the petitioner had placed reliance have not only be considered by the Small Causes Court at Bombay, but further the same have been considered in the proper perspective. Accordingly, no case is made out for interfering with the impugned order.

8] Learned counsel for the petitioner, however, right in his submission that whilst condoning the delay, at least some costs ought to have been awarded in favour of the petitioner. In the facts and circumstances of this case, it is appropriate that the respondent-Corporation to pay costs, which are assessed at Rs.10,000/- (Rs. Ten Thousand only) .

9] The Small Causes Court at Bombay to ensure that the costs as aforesaid are paid by the respondent-Corporation to the petitioner.

10] Subject to the aforesaid, the impugned order is not interfered.

11] Except to the extent indicated above, Rule is discharged. There shall be no order as to costs in this petition.

(M. S. SONAK, J.)