

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

**CIVIL APPLICATION NO. 1161 OF 2015
IN
FIRST APPEAL (ST.) NO. 29117 OF 2014**

The Union of India & Ors. ... Applicants.
V/s.
Dr. Asha Manohar Joshi & Anr. ... Respondents

Mrs. S. I. Shaikh with Purnima Awasthi i/b S.I. Shaikh & Co. for the applicants.
Mrs. Kalyani Tulongkar i/b S. B. Deshmukh for respondent nos. 1 & 2.

**CORAM : K. K. TATED, J.
DATED : 14/08/2015.**

P.C.:

. Heard learned Counsel for the parties.

2 This application is preferred by defendant no.1 and defendant no.6 for condonation of 134 days delay in filing the First Appeal challenging the decree dated 27.03.2014 passed by Bombay City Civil Court at Bombay in suit no. 7651 of 1985 (High Court No. 1586 of 1985) by which the Trial Court held that the plaintiffs are entitled to sum of Rs.5,60,000/- with 6% interest per annum from the date of filing of the suit till realisation of amount.

3 The learned Counsel for the applicants submits that they immediately applied for certified copy of impugned Judgment and Decree by their praicepe dated 28.03.2014. She submits that the Advocate's clerk made inquiry in the office of Trial Court on several

occasions for certified copy. She submits that the office of the Trial Court time and again informed that certified copy was not ready. She submits that though certified copy was ready on 19.05.2014, the same was collected by them on 02.08.2014 for want of knowledge about the same. She submits that as soon as the certified copy was collected by them, they immediately forwarded to the Higher Authority for considering whether they want to file appeal or accept the same. She submits that the Higher Authority took some time to take decision. As soon as the decision taken by the Higher Authority, they filed present First Appeal in this Court on 27.10.2014. She submits that the delay is not intentional but the same is occurred because of the procedure to file First Appeal on behalf of Union of India. These facts are stated by the applicant in paragraph 2 of the Civil Application. She submits that they have good chance of success in the present proceeding. The learned Counsel for the applicant submits that in the interest of justice, this Hon'ble Court be pleased to condone the delay and matter be decided on its own merits.

4 On the other hand, the learned Counsel for the respondents plaintiffs vehemently opposed the present Civil Application. They filed their affidavit-in-reply dated 06.08.2015. The learned Counsel for the respondents plaintiffs submits that the applicant has not shown sufficient cause for condonation of inordinate delay of 134 days in filing First Appeal. She submits that applicant has not disclosed the dates on which their clerk attended the office of Trial Court for collecting certified copy and about making inquiry for certified copy. She submits that if delay is not explained properly, the Court should not

condoned the same. In support of this contention, the learned Counsel for the respondents relies on Judgment of the Apex Court in the matter of *Postmaster General & Ors. V/s. Living Media India Ltd. & Anr. Reported in (2012)3 Supreme Court Cases 563*, particularly paragraphs 27, 28 and 30.

5 The learned Counsel for the respondents plaintiffs also relies on unreported order passed by this Court (Coram: K. K. Tated, J) dated 22.06.2011 in the matter of *Mrs. Suneeta Laxman Kaledhonker V/s. The State of Maharashtra & Ors. in Writ Petition no. 1774 of 2010*. On the basis of these submissions, the learned Counsel for the respondents plaintiffs submits that there is no substance in the present Civil Application and same to be dismissed with costs.

6 I heard both the sides at length. In the present proceeding, the reasons given by the applicants in paragraph 2 shows the sufficient cause for condonation of delay. The authority relied by the respondents in the matter of Postmaster General & Ors. (Supra) is not applicable in the facts and circumstances of the present case. In that matter, the delay was more than 427 days in filing SLP. Not only that, the Apex Court specifically stated in paragraph 27 and 28 that if sufficient cause is shown, the Court can condone the delay. Even, the unreported order in the matter of Mrs. Suneeta Laxman Kaledhonker,(supra) the same view taken by this Court that if sufficient cause not shown, court should not entertain the application for condonation of delay.

7 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.”

8 Considering the submissions made by learned counsel for the applicants, averments made in civil application and ratio laid down by the Apex Court in the matter of ***N.Balkrishnan, (supra)*** I am satisfied that applicants have made out the case for allowing the civil application. At the same time, applicants to pay cost to the respondents plaintiffs.

9 Hence, the following order is passed:

a) Delay of 134 days in filing First Appeal is condoned.

b) Applicants either to pay respondents plaintiffs or deposit the cost of Rs.2,500/- in the Registry within four weeks from today, failing which civil application shall stand dismissed without referring back to the court .

c) Civil Application stands disposed of accordingly.

(K.K.TATED, J.)