

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

**CIVIL APPLICATION NO.1728 OF 2014
IN
FIRST APPEAL (ST) NO.29699 OF 2013**

The Municipal Corporation of Gr.Mumbai .. Applicant

vs

Santoshkumar Sukhlal Gupta .. Respondent

Mrs.M.R.Bhoir for the applicant

Mr.Wasim R. Khan for the respondent

**CORAM : K.K.TATED, J.
DATED : 23/04/2015**

PC:

1 Heard the learned counsel for the parties.

2 This application is preferred by defendant Corporation for condonation of 360 days delay in filing First Appeal challenging the judgment and decree dated 31.8.2012 passed by Bombay City Civil Court, Mumbai in Long Cause Suit No.2215 of 2010.

3 The learned counsel for the applicant submits that as soon as the judgment and decree passed by Trial Court they applied for certified copy on 8.10.2012 and the same was collected on 2.11.2012.

4 The learned counsel for the applicant submits that by mistake, they filed application for certified copy of judgment only. Hence, later on they filed application for certified copy of decree on 12.9.2012. The same was ready on 18.3.2013 and collected on 20.3.2013.

5 The learned counsel for the applicant submits that at that relevant time applicant's advocate were overburdened with court matters and due to shortage of staff there is delay in filing the present First Appeal. In support of these reasons she relies on paragraph 3 of Civil Application.

6 The learned counsel for the applicant submits that in the interest of Justice, this Hon'ble Court be pleased to condone the delay in filing the First Appeal. She submits that if delay is not condoned, irreparable loss and injury will be caused to the applicant. She submits that applicant has good chance of success in the present matter.

7 On the other hand, the learned counsel for the respondent plaintiff vehemently opposed the present Civil Application. Respondent filed their Affidavit-in-Reply dated 28.11.2014. The learned counsel for the respondent submits that applicant has not shown sufficient cause for condonation of inordinate delay. He submits that applicant has not disclosed the reason why they took more than one month in applying for certified copy of order passed by Trial Court. He submits that the respondent Corporation has sufficient number of advocates to look after the litigation. Hence, the reason given by the applicant in paragraph 3 cannot be held as sufficient cause. In support of his

contention, the learned counsel for the respondent relies on the judgment of the Apex Court in the matter of ***Maniben Devraj Shah vs. Municipal Corporation of Brihan Mumbai (2012) 5 SCC 157.***

8 On the basis of these submissions and the law declared by the Apex Court in the matter of *Maniben Devraj Shah vs. Municipal Corporation of Brihan Mumbai (Supra)*, the learned counsel for the respondent plaintiff submits that there is no substance in the present Civil Application and same be dismissed with costs.

9 I have heard both the sides at length. In the present proceeding, there is a delay of more than 360 days in filing First Appeal. Applicant in application specifically stated that due to overburden of work during that period and shortage of staff there is a delay in preferring the Civil Application.

10 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.”

11 The objection raised by the advocate for the respondent plaintiff in allowing the present Civil Application for condonation of delay cannot be sustained in the facts and circumstances of the case. Respondent has not shown in their Affidavit-in-Reply the reason to oppose the present Civil Application. Even the authority cited by the respondent in the matter of *Maniben Devraj Shah vs. Municipal Corporation of Brihan Mumbai (Supra)* is not applicable in the facts and circumstances of the present case. In that case, there was delay of more than 7 years in filing appeal on the ground that Corporation has misplaced their papers. The Apex Court held that Corporation has not disclosed when they misplaced the papers and when same were re-constructed for filing the appeal.

12 Considering the submissions made by the learned counsel for the Applicant, the averments made in the Application and also the law declared by the Apex Court in the matter of *N.Balkrishnan Vs. M. Krishnamurthy (Supra)*, I am satisfied that the Applicant has made out a case for allowing the present Civil Application but at the same time, applicant to pay cost to the respondent plaintiff. Hence, following order:

- a) Delay of 360 days in filing First Appeal is condoned.
- b) Applicant to pay cost of Rs.2500/- to the respondent and or deposit in the Registry of this court within six

weeks from today, failing which Civil Application shall stand dismissed without referring back to the court.

c) Civil application stands disposed off accordingly.

(K.K.TATED, J.)