

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION  
WRIT PETITION NO. 89 OF 2015

|                                            |               |
|--------------------------------------------|---------------|
| Beena K. Singh                             | .. Petitioner |
| vs.                                        |               |
| Municipal Corporation of Greater<br>Bombay | .. Respondent |

Ms Minal Chavan i/b Mr. Vinay Hegde for the Petitioner.  
Mr. S.S. Pakale a/w. Mr. S.K. Sonawane for BMC

**CORAM : M. S. SONAK, J.**  
**DATE : 28 April, 2015.**

**P.C. :-**

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

2] This petition challenges the order dated 22 September 2014, by which the learned City Civil Court has condoned the delay of almost 1170 days on the part of the Municipal Corporation of Greater Bombay (MMC), in the matter of filing written statement in defence, in L.C. Suit No. 2157 of 2010.

3] Ms Minal Chavan, the learned counsel for the petitioner, submitted that there is absolutely no explanation or cause shown for the delay. The impugned order also records that there are no exceptional circumstance brought out by the MMC in order to explain the delay. In this view of the matter, learned counsel submitted that the exercise of condoning the delay is without jurisdiction or in any case, is an exercise which is vitiated by perversity and non-application of mind.

4] Mr. S.S. Pakale, learned counsel appearing for the MMC, submitted that the learned City Civil Court, having positively exercised discretion and condoned the delay, this Court, ought not to interfere with this order. Besides, Mr. Pakale submitted that during the relevant period, several officers were concerned with the matter were transferred / shifted and on account of communication gap between them, there was some delay in matter of filing of written statement. The suit concerns an illegal construction and in case, opportunity of filing written statement is deprived to the MMC, the same will occasion serious prejudice to the public interest. For all these reasons, Mr. Pakale submitted that the impugned order may not be interfered with.

5] Upon hearing the learned counsels for the parties and perusing the record, though, there is no reason to interfere with the portion of the impugned order which condones delay and permits the filing of written statement nevertheless, some interference is warranted on the aspect of costs as well as the general attitude of the officers of the MMC, in the matter of defence of matters pending in courts of law.

6] In the case of *N. Balakrishnan vs. M. Krishnamurthy*<sup>1</sup>, the Hon'ble Supreme Court has held that condonation of delay is a matter of discretion of the Court and Section 5 of the Limitation Act does not say that such discretion can be exercised only if the delay is within a certain limits. Length of delay is no matter, acceptability of explanation is the only criteria. Once the Court accepts the

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1 (1998) 7 SCC 123

explanation as sufficient, it is the result of positive exercise of discretion and normally a superior court should not disturb such exercise, much less in revisional jurisdiction, unless the exercise of discretion was on wholly untenable grounds or arbitrary or perverse. Rules of limitation are not meant to destroy the rights of the parties. They are meant to see that parties do not resort to dilatory tactics, but seek their remedy promptly. 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 doors against him. If the explanation does not smack of malafides or is not put forth as part of a dilatory strategy, the court must show utmost consideration to the suitor. While condoning the 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 large litigation expenses. It would be a salutary guidelines that when courts condone the delay, the court should compensate the opposite party for the loss.

7] In the case of *State of Nagaland vs. Lipok AO*<sup>2</sup>, the Hon'ble Supreme Court took cognizance of the usual bureaucratic delays which take place in the functioning of the State and its agencies / instrumentalities and observed that experience has shown that on account of any impersonal machinery (no one in charge of the matter is directly hit or hurt by the judgment sought to be subjected to appeal) and the inherited bureaucratic methodology imbued with the note-making, file-pushing, and passing-on-the-buck ethos, delay on its part is less difficult to understand though more difficult

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2 AIR 2005 SC 2191

to approve. The State which represents collective cause of the community, does not deserve a litigant-non-grata status. The Courts, therefore have to be informed with the spirit and philosophy of the provision in the course of the interpretation of the expression of sufficient cause.

8] Applying the aforesaid principles, there is no reason to interfere with the portion of the impugned order which condone delay and permits filing of written statement. The suit in the present case concerned legality of the suit structure. Accordingly, it is in public interest that such issue is determined expeditiously by the court. Any lapse on the part of the MMC in this regard, affects public interest more than perhaps what it would affect the officials of the MMC who have been entrusted with the duty to protect public interest. Besides in the present case since the City Civil Court, in positive exercise of its discretion has chosen to condone the delay and permitted filing of the written statement, it cannot be said that there is any jurisdictional error or perversity of approach, warranting any interference.

9] As a result of such approach on the part of the court, however, an impression appears to have gathered with the officials of the MMC, that notwithstanding any lack of diligence on their part, the courts would invariably condone the delay and permit filing of written statements at belated stage. Such impression appears hard to erase even when costs are imposed, possibly because in most cases, such costs are borne by the MMC, from out of taxes, fees, and other incomes contributed by the members of the public. Based upon such

impression, the MMC officials, who are otherwise responsible for attending to Court matters with promptitude and diligence, shirk duties and display an extremely casual and at times callous approach, particularly in matters of filing written statements within time. There are instances when such delay may be actuated by malafides or extraneous considerations, as well.

10] In the present case, considering the length of the delay and the cause shown, opportunity was offered to the MMC to place on record some material which would indicate the precise official / officials who were responsible for the delay. Matter was adjourned from time to time, in order to enable the MMC to place such material on record. Finally, Mr. Pakale, the learned counsel for the MMC on the basis of information supplied to him by Mr. S. S. Bharambye, Sub Engineer at MMC, furnished the following chart indicating the names of officials in the concerned department from 11 November 2010 to 24 January 2014, without however any effort to fix the responsibility upon any particular officer or official. The chart reads thus:

|                           |                   |          |                                 |
|---------------------------|-------------------|----------|---------------------------------|
| <i>“Mr. Kallu Gaikwad</i> | <i>Asst. Eng.</i> | <i>]</i> |                                 |
| <i>Mr. Dalal</i>          | <i>Sub. Eng.</i>  | <i>]</i> | <i>11.11.2010 to 02.01.2012</i> |
| <i>Mr. Sarang</i>         | <i>Jr. Eng.</i>   | <i>]</i> |                                 |
| <i>Mr. Kallu Gaikwad</i>  | <i>Asst. Eng.</i> | <i>]</i> |                                 |
| <i>Mr. Satish Powar</i>   | <i>Sub. Eng.</i>  | <i>]</i> | <i>03.01.2012 to 29.03.2013</i> |
| <i>Mr. Sarang</i>         | <i>Jr.Eng.</i>    | <i>]</i> |                                 |
| <i>Mr. Mahesh Jangam</i>  | <i>Ass. Eng.</i>  | <i>]</i> |                                 |
| <i>Mr. Ambrujkar</i>      | <i>Sub.Eng.</i>   | <i>]</i> | <i>18.01.2013 to 15.06.2013</i> |
| <i>Mr. Paras</i>          | <i>Jr. Eng.</i>   | <i>]</i> |                                 |

*Mr. Mahesh Jangam*      *Asst. Eng.*      *]*  
*Mr. Dileep Gholam*      *Sub. Eng.*      *]*      12.11.2013

*In place of Gholam,*  
*Mr. Bharambye is posted w.e.f*      12.11.2013.  
*Written Statement came to be filed on 24.01.2014.”*

11] Obviously, the attempt on the part of the MMC is to refrain from fixing any responsibility with a view to streamline procedures, so as to avoid such lapses in the future. This is hardly an encouraging situation. The costs in the present case deserve to be enhanced from Rs.2,000/- to Rs.25,000/- (Rupees Twenty Five Thousand) and it is directed accordingly. To begin with, the MMC shall pay such costs to the petitioner or deposit the same with the City Civil Court within a period of six weeks from today. Upon deposit, the petitioner shall be at liberty to withdraw the same unconditionally.

12] In order that such instances are avoided and the municipal coffers do not bear the brunt of such costs, the Municipal Commissioner is directed to conduct an enquiry in the matter, against official / officials responsible for the delay in filing of written statement in the present case. Such enquiry may be conducted as expeditiously as possible and in any case within a period of four months from date of this order. Such enquiry shall comply with principles of natural justice and fair play. As a result of such enquiry, responsibility is to be fixed upon the official / officials for the delay and the costs of Rs.25,000/- should be recovered from such official / officials in the lump sum. Necessary compliance report should be filed by the Municipal Commissioner, in this Court, within

a period of five months from the date of this order.

13] The Municipal Commissioner should also consider issuance of appropriate directions to the officials concerned with court matters, to attend to the same diligently, so that there is no prejudice to the interest of the MMC, public interest as also the administration of justice.

14] In the result, the impugned order is modified and the costs imposed therein is enhanced from Rs.2,000/- to Rs.25,000/- (Rupees Twenty Five Thousand). Such costs to be paid to the petitioner or deposited in the trial Court within a period of six weeks from today. Upon deposit, the petitioner shall be at liberty to withdraw the same unconditionally.

15] Rule is made absolute to the aforesaid extent. There shall be no order as costs.

16] All concerned to act on basis of an authenticated copy of this order.

**(M. S. SONAK, J.)**