

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD

CIVIL APPLICATION NO. 13064 OF 2015
IN
CIVIL REVISION APPLICATION NO. 194 OF 1999
(Converted from Writ Petition no. 2233 of 1998)

Yayabhai Abbasbhai Bhorl, deceased,
through legal representatives :-

1] Hatimbhai Abbasbhai Bohri,
since deceased through
legal representatives :-

1A] Hanjala Hatimbhai Bohri,
and others ... Applicants

versus

Nemichand Ugamrao Company
Dondaicha, and others ... Respondents

Mr. Subodh P. Shah, Advocate for applicants
Mr. Anand Bhandari, Advocate for respondent no. 3-B

CORAM : SUNIL P. DESHMUKH, J.
DATE : 14th October, 2016

ORDER :

1. Heard learned counsel for appearing parties.
2. Present application has been moved for restoration of civil revision application with a request to condone delay of about 4517 days, which has occurred, under following circumstances according to applicants.

3. The applicants, submit that their age-old father had lodged civil revision application against the appellate court's judgment and decree in regular civil appeal no. 156 of 1989 reversing the judgment and decree of the trial court in regular civil suit bearing no. 136 of 1983, granting eviction of present respondents.

4. Rule came to be issued in the civil revision application on 08-03-2002. The old man was being assisted by his brother. After admission of civil revision application, father and/or said brother of father of the applicants had no occasion to revert to the proceedings pending in the high court as ordinarily it takes lot of time for final hearing. It appears, that office required certified copy of memorandum of appeal and had raised an objection about the same. On 19-03-2003, conditional order was passed that in case objections are not removed, civil revision application shall stand dismissed without further reference to the court.

5. The original civil revision applicant had died soon after admission and communication of the conditional order passed by this court did not reach the brother of deceased father of the applicants. Objections had remained to be removed. Eventually, the conditional order had taken effect. The brother of their father who was assisting him in prosecuting the matter also died in 2012.

6. Around August, 2015, applicants became aware about the proceedings having been filed by their father against reversal of

decree of eviction against present respondents. Said order had been realized by the applicants thereafter and as such, they have filed present application, submitting further that there is no deliberate consumption of time nor it can be said that they have derived any benefit by causing such delay.

7. Mr. Shah, learned counsel appearing on behalf of the applicants states that in the circumstances, deliberation in not approaching earlier nor any indolence can be imputed. The reasons given are genuine. A litigant prosecuting the matter can hardly be said to gain any benefit from causing delay. He further submits that dismissal of civil revision application had taken place on account of non production of certified copy of appeal memorandum of appeal filed before the district court and further submits that dismissal of civil revision application has taken place on such a technical omission; which could not be attended to and mended under aforesaid facts and circumstances.

8. He goes on to submit, ostensibly delay may appear to be considerable but it would have to be considered that it has occurred under aforesaid circumstances which are true and genuine. Mr. Shah submits that hallmark of jurisprudence is that a litigant whose interest is involved in property and is at stake may not be deprived of a fair opportunity for delay caused on his part in prosecuting the cause.

9. Learned counsel, in support of his submissions, refers to a couple of decisions of the apex court, one in the case of *Collector, Land Acquisition, Anant Nag and another vs. MST Katiji and others*, reported in *AIR 1987 SC 1353* and another in the matter of *N. Balakrishnan v. M. Krishnamurthy*, reported in *(1998) 7 SCC 123* and another, and particularly relies on paragraphs no. 12 and 13 of the latter one.

" 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 and State of W.B. v. Administrator, Howrah Municipality.*

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 the delay, the court should not forget 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 guideline that when courts*

condone the delay due to laches on the part of the appellant, the court shall compensate the opposite party for his loss. "

10. Countering aforesaid submissions, learned counsel Mr. Bhandari with quite some vehemence states that it is difficult to believe in such arguments that the delay has been caused for the reasons as are given. He submits that true, genuine and legitimate details about deaths of persons and particularly of the one who is said to have been assisting applicants' father in prosecuting the matter are not coming forth and in the circumstances, it gives indication of intention of the applicants to keep back proper information from the court. He further submits that the requisite details about contacting advocate only in August, 2015 are also not referred to in the application. He further submits that in the interregnum around 2007 to 2010, the applicants have issued notices to some of the tenants after death of their father, however, they have not issued similar notices to respondents. In such circumstances, claim of applicants being unaware of the litigation is of doubtful veracity.

11. Learned counsel Mr. Bhadari appears to suggest that there is an element of indolence on applicants' part and therefore the reasons given by them to substantiate sufficient cause for delay may not be able to qualify to satisfy requirement under section 5 of the Limitation Act, 1963.

12. Although submissions as aforesaid are being advanced, it will have to be noted that the factual position about father of the applicants being prosecuting litigation and him being assisted by his brother and both having died, father after admission of the civil revision application, and his brother around 2012, these aspects would be required to be given their due.

13. While it may be that the applicants had been after other tenants around 2007-2010, had they really been aware of the dismissal of the civil revision application on account of non submission of certified copy of memorandum of appeal filed before the district court, by not removing such objection, the applicants cannot be said to have gained any benefit in the same nor anything has been brought forth showing any substantial benefit is being derived by the applicants in the process.

14. The reasons given for condonation of delay under the circumstances appear to carry quite a bit of force and applying guiding principles in the case of *Collector, Land Acquisition, Anant Nag and another vs. MST Katiji and others*, reported in *AIR 1987 SC 1353 (supra)* reading thus :

" 1. Ordinarily a litigant does not stand to benefit by lodging an appeal late.

2. *refusing to condone delay can result in a meritorious matter being thrown out of the very threshold and cause of justice being defeated. As against this when delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties.*

3. *"Every day's delay must be explained" does not mean that a padantio (pedantic) approach should be made. Why not every hour's delay, every second's delay". The doctrine must be applied in a rational common sense pragmatic manner.*

4. *When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side can not claim to have vested right in injustice being done because of non-deliberate delay.*

5. *There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala fides. A litigant does not stand to benefit by resorting to delay. In fact, he runs a serious risk.*

6. *It must be grasped that judiciary respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so. "*

it appears that the situation can be salvaged by allowing the application subject to certain conditions.

15. As such, order dated 19-03-2003 stands recalled, subject to payment of ₹ 40,000/- to be deposited in this court within a period of eight weeks from today.

16. The amount so deposited would be allowed to be withdrawn by present respondents to be distributed equally among them.

17. In the circumstances, civil application stands granted in terms of prayer clauses (A), (B), (C) and (D) and is disposed of.

18. In case of failure to deposit the amount, order dated 19-03-2003 would stand restored.

SUNIL P. DESHMUKH,
JUDGE

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