

- 1 -

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

**CIVIL APPLICATION NO.15756/2015
IN
WRIT PETITION NO.5183/2001**

Appasaheb Baburao Pathare & others.
...Applicants..

Versus

Ganga Bhima Bhalerao & others.
...Respondents...

.....

Shri V.D. Hon, Senior Advocate i/b Shri A.V. Hon,
Advocate for applicants.

Shri K.B. Autade, Advocate for respondent nos.1, 2(a) to
2(c).

Respondent no.5 served.

.....

CORAM: RAVINDRA V. GHUGE, J.

DATE: 03.02.2016

ORDER :

1] Shri V.D. Hon, learned Senior Advocate
strenuously submits that though the Writ Petition
No.5183/2001 has been dismissed in default almost 13
years and 288 days ago, the history of litigation between
the parties has to be taken into account for considering

- 2 -

whether the litigation deserves to be kept alive or not.

2] He submits that the circumstances in which the writ petition was dismissed and the delay has been caused have been explained in paragraph nos.8, 9 and 9 (number repeated) of the civil application.

3] Shri Hon has also taken me through the history of litigation between the parties. The applicants are the original petitioners, who are descendants of the original landlord. The non-applicants are the respondents in the petition, who are the descendants of the original tenant.

4] Contention is that the tenancy was terminated in 1965 and since then the parties are in litigation. The proceedings u/s 32-G of the Bombay Tenancy and Agricultural Lands Act (presently the Maharashtra Tenancy and Agricultural Lands Act) were decided and the name of the deceased tenant Bhima was deleted as a tenant. He also submits that there was subsequently a voluntary surrender of the tenancy rights by the deceased Bhima and the tenancy was terminated on 3.12.1965.

5] He, however, further submits that the original tenant deceased Bhima preferred a tenancy case u/s 32-M

- 3 -

of the Act and obtained an order of determination of the purchase price. Regular Civil Suit No.52/1980 filed by the predecessors of the applicants resulted in a judgment and decree in favour of the tenant. Redemption of mortgage of the suit land was declared by the Civil Court.

6] He further submits that the deceased tenant Bhima had approached the Sub Divisional Officer, who by the order dated 25.5.2000, had directed proper enquiry to be conducted. The applicants approached the Maharashtra Revenue Tribunal, which dismissed the revision proceedings by judgment dated 1.2.2001. It was in these circumstances that the writ petition was filed. He, therefore, submits that the delay of 13 years and 288 days be condoned and the petition be heard on its merits.

7] Shri K.B. Autade, learned Advocate appearing on behalf of the respondents has strenuously opposed the civil application. He submits that the litigation must come to an end at some point in time. After about 14 years, the writ petition cannot be restored. The writ petition was not even admitted when it was dismissed. The respondents have a legitimate expectation that after

- 4 -

14 years, the matter dismissed for non-prosecution cannot be restored.

8] He further submits that the deceased tenant Bhima and his descendants, who are non-applicants herein, have been litigating from 1965 onwards. It is 51 years ago that they have succeeded. All the impugned orders are in favour of the non-applicants. The concurrent findings are against the applicants. The litigation must come to an end some day and which has already come to an end about 14 years ago. He, therefore, prays that this application be dismissed with costs.

9] I have considered the submissions of the learned Advocates.

10] Issue before the Court is as to whether the delay of 13 years and about eight months deserves to be condoned or not. It needs to be considered whether sufficient and acceptable reasons are assigned for condonation of delay or not.

11] In paragraph nos.8, 9 and 9 (repeated) of the civil application, the applicants have put forth the reasons for condonation of delay, which read as follows:-

- 5 -

"8. The applicants state that Madhukar Baburao Pathare was looking after entire litigation. The other applicants were totally dependent on late Madhukar so far as giving of instructions and looking after the proceeding. Unfortunately, late Madhukar passed away on 3.12.2001. The applicants herein were therefore not aware regarding the proceeding filed in this Hon'ble Court.

9. The applicants state that the office of Talathi has adopted method of taking entries in 7x12 extract on the computer. Till then there was no difficulty for the applicants as their names were being shown in the cultivation column. However, thereafter the Talathi had shown some reluctance for taking entries. The applicants therefore verified in their house regarding the relevant documents and it is thereafter they came to know that there is writ petition No.5183 of 2001 which was filed challenging the orders passed by the Maharashtra Revenue Tribunal and the Sub Divisional Officer. The applicants in

- 6 -

these premises have contacted their advocate and the advocate thereafter had verified in the office regarding status of the writ petition and it was learnt that the matter is dismissed in default by order dated 14.12.2001.

9. The applicants in these premises were totally in dark and therefore, they could not take necessary steps in time. The delay in filing the application is purely circumstantial and not deliberate and in the interest of justice, the same be condoned by setting aside the order of dismissal in default."

12] The Apex Court in the case of *Ram Nath Sao alias Ram Nath Sahu & others v. Gobardhan Sao & others* reported at **AIR 2002 SC 1201** has considered the intent of the legislature behind introduction of the Limitation Act and the period within which recourse should be had to an available remedy. The Apex Court was dealing with the issue of abatement of an appeal and the request for setting aside the order of abatement. It is seen from paragraph no.3 of the judgment of the Apex Court in the *Ram Nath Sao's case* (supra) that the delay was of about

130 days.

13] The relevant observations of the Apex Court in paragraph nos.9 to 12 read as under:-

"9. In the case of Rama Ravalu Gavade v.Sataba Gavadu Gavade (dead) through LRs. and another (1997) 1 Supreme Court Cases 261, during the pendency of the appeal, one of the parties died. In that case, the High Court had refused to condone the delay in making an application for setting aside abatement and set aside abatement, but this Court condoned the delay, set aside abatement and directed the appellate court to dispose of appeal on merit observing that the High Court was not right in refusing to condone the delay as necessary steps could not be taken within the time prescribed on account of the fact that the appellant was an illiterate farmer.

10. In the case of N.Balakrishnan v. M.Krishnamurthy (1998) 7 Supreme Court Cases 123, there was a delay of 883 days in filing application for setting aside exparte decree for which application for condonation of delay was filed. The trial court having found that sufficient cause was made out for condonation of delay, condoned the delay but when the matter was taken to the High Court of Judicature at Madras in a revision application under Section 115 of the Code, it was observed that the delay

- 8 -

of 883 days in filing the application was not properly explained and it was held that the trial court was not justified in condoning the delay resulting into reversal of its order whereupon this Court was successfully moved which was of the view that the High Court was not justified in interfering with order passed by trial court whereby delay in filing the application for setting aside exparte decree was condoned and accordingly order of the High Court was set aside. K.T.Thomas, J., speaking for the Court succinctly laid down the law observing thus in paras 8, 9 and 10 :

"8. The appellant's conduct does not on the whole warrant to castigate him as an irresponsible litigant. What he did in defending the suit was not very much far from what a litigant would broadly do. Of course, it may be said that he should have been more vigilant by visiting his advocate at short intervals to check up the progress of the litigation. But during these days when everybody is fully occupied with his own avocation of life an omission to adopt such extra vigilance need not be used as a ground to depict him as a litigant not aware of his responsibilities, and to visit him with drastic consequences.

9. It is axiomatic that condonation of delay

- 9 -

is a matter of discretion of the court. Section 5 of the Limitation Act does not say that such discretion can be exercised only if the delay is within a certain limit. Length of delay is no matter, acceptability of the explanation is the only criterion. Sometimes delay of the shortest range may be uncondonable due to a want of acceptable explanation whereas in certain other cases, delay of a very long range can be condoned as the explanation thereof is satisfactory. Once the court accepts the explanation as sufficient, it is the result of positive exercise of discretion and normally the superior court should not disturb such finding, much less in revisional jurisdiction, unless the exercise of discretion was on wholly untenable grounds or arbitrary or perverse. But it is a different matter when the first court refuses to condone the delay. In such cases, the superior court would be free to consider the cause shown for the delay afresh and it is open to such superior court to come to its own finding even untrammelled by the conclusion of the lower court.

10.

The primary function of a court is to adjudicate the dispute between the parties

- 10 -

and to advance substantial justice. The time-limit fixed for approaching the court in different situations is not because on the expiry of such time a bad cause would transform into a good cause."

[Emphasis added]

The Court further observed in paragraphs 11, 12 and 13 which run thus:-

"11. Rules of limitation are not meant to destroy the rights 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. The law of limitation fixes a lifespan for such legal remedy for the redress of the legal injury so suffered. Time is precious and wasted time would never revisit. During the efflux of time, newer causes would sprout up necessitating newer persons to seek legal remedy by approaching the courts. So a lifespan must be fixed for each remedy. Unending period for launching the remedy may lead to unending uncertainty and consequential anarchy. The 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

- 11 -

welfare that a period be put to litigation). 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. 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) 1 SCR 1006 and *State of W.B. v. Administrator, Howrah Municipality* (1972) 1 SCC 366.

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

- 12 -

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 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. "

[Emphasis added]

11. Thus it becomes plain that the expression "sufficient cause" within the meaning of Section 5 of the Act or Order 22 Rule 9 of the Code or any other similar provision should receive a liberal construction so as to advance substantial justice when no negligence or inaction or want of bona fide is imputable to a party. In a particular case whether explanation furnished would constitute "sufficient cause" or not will be dependent upon facts of each case. There cannot be a straitjacket formula for accepting or rejecting explanation furnished for the delay caused in taking steps. But one thing is clear that the courts should not proceed with the tendency of finding fault with the cause shown and reject the petition by a slipshod order in over jubilation of disposal drive.

- 13 -

Acceptance of explanation furnished should be the rule and refusal an exception more so when no negligence or inaction or want of bona fide can be imputed to the defaulting party. On the other hand, while considering the matter the courts should not lose sight of the fact that by not taking steps within the time prescribed a valuable right has accrued to the other party which should not be lightly defeated by condoning delay in a routine like manner. However, by taking a pedantic and hyper technical view of the matter the explanation furnished should not be rejected when stakes are high and/or arguable points of facts and law are involved in the case, causing enormous loss and irreparable injury to the party against whom the lis terminates either by default or inaction and defeating valuable right of such a party to have the decision on merit. While considering the matter, courts have to strike a balance between resultant effect of the order it is going to pass upon the parties either way.

12. In view of the foregoing discussions, we are clearly of the opinion that on the facts of present case, Division Bench of the High Court was not justified in upholding

- 14 -

order passed by the learned Single Judge whereby prayers for condonation of delay and setting aside abatement were refused and accordingly the delay in filing the petition for setting aside abatement is condoned, abatement is set aside and prayer for substitution is granted."

14] It is clear from the view taken by the Apex Court that the time limit fixed for approaching the Court in different situations is not because on the expiry of the time a bad cause would transform into a good cause. Rules of limitation should not be utilized to destroy the rights of the parties. At the same time, the Court has to consider that the life span of litigation is fixed by legal remedy. Unending period for launching the remedy may lead to an unending uncertainty and consequential anarchy. The law of limitation is thus founded on public policy.

15] The Apex Court, therefore, concluded that the Single Judge and the Division Bench of the High Court were wrong in refusing to condone the delay of 130 days in setting aside the order of abatement. In the instant case, the delay is of 13 years and 10 months. The

- 15 -

reasons cited are neither satisfactory nor do they appear to be acceptable. I, therefore, do not find any merit in this civil application. Hence, the same is rejected.

(RAVINDRA V. GHUGE, J.)