

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL APPLICATION NO.1074 OF 2015
IN
FIRST APPEAL (ST.) NO.34666 OF 2014

The Executive Engineer ... Applicant

vs.

Shri Madhav Vyankatesh Kulkarni

Since deceased through legal representatives

Shrimati Shamala Madhavrao Kulkarni & Ors. ... Respondents

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Mr.D.D.Shinde for the Applicant.

Mr.Sudam Kalp i/b Mr.Rajendra Anbhule for Respondent Nos.1 to 3.

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CORAM : K.K. TATED, J.

DATE : 01ST FEBRUARY, 2016

P.C.:

. Heard the learned Counsel for the parties.

2. This application is preferred by the Acquiring Body for condonation of 147 days delay in filing the First Appeal challenging the Judgment and Award dated 31st April, 2014 passed by the Joint Civil Judge Senior Division, Kolhapur in Land Reference No.31 of 2007.

3. The learned Counsel for the Applicant submits that before filing the First Appeal they required to complete several procedures as prescribed by the rules and regulations. He submits that the Advocate who appears in reference Court had to forward his opinion to the concerned Officer. The concerned Officer after scrutinizing the entire paper and proceedings, take decision to file the First Appeal, hence there is delay in filing the First Appeal in this case. Inspite of his submissions, he also relied on paragraph (6) of the Civil Application.

4. On the other hand the learned Counsel Mr.Kalp appearing on behalf of the Respondent/Claimants vehemently opposed the present Civil Application. It is to be noted that Civil Application was duly served on the Claimants, but Claimants failed to file any reply. The learned Counsel for the Claimants submits that the Applicant has not shown sufficient cause for condonation of more than 147 days delay in filing the First Appeal. Hence there is no question to allow the present Civil Application and hence same to be dismissed with costs.

5. 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 lifespan 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.”

6. Considering the submissions made by the learned Counsel for the Applicant and the ratio laid down by the Apex Court in the matter of *N.Balkrishnan Vs. M. Krishnamurthy (1998) 7 SCC 123*, I am of the view that the Applicant has made out a case for allowing this Civil Application. Hence following order;

i) Civil Application is allowed in terms of prayer clause (a), which reads thus;

(a) That this Hon'ble Court be pleased to condone 147 days of delay in filing above mentioned First Appeal against the Judgment and Award dated 30.04.2014 passed by the Learned Civil Judge Senior Division, Kolhapur in L.A.R.No.31/2007.

ii) Civil Application stands disposed of accordingly.

(K.K. TATED, J.)