

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO. 30/2016

Shantabai Atmaram Tambe

... Applicant

V/s.

Suman Shridhar Nagarkar & Anr.

... Respondents

Mr. S. S. Kanetkar for the Applicant

CORAM: K.K. TATED, J.
DATED : JUNE 21, 2016

P.C. :

1. Heard the learned counsel for the applicant. By this application, the applicant defendant challenges the order dated 24.08.2015 passed by the Extra Joint Adhoc District Judge, Pune below exhibit 1 in Misc. Civil Application No.31/2014 condoning 61 days delay in preferring the appeal challenging the judgment and decree dated 30.07.2013 passed by 5th Jt. Civil Judge, Junior Division, Pune in Regular Civil Suit No.2487/2000.

2. The defendant also challenges the order dated 15.09.2015 passed by the Extra Joint Adhoc District Judge below exhibit 16/2 in Civil Misc. Application No.31/2014 allowing the plaintiff's application under section 148 and 151 of the Code of Civil Procedure, 1908 for extension of time to pay cost of Rs.1000/- as per order dated 24.08.2015.

3. Few facts of the matter are, as under:

The plaintiff filed Regular Civil Suit No. 2487/2000 in the court of Jt. Civil Judge, Junior Division, Pune for recovery of possession of the suit property i.e. house number 201 and 201/2 admeasuring 209 sq.mtr. situated at village Urali Kanchan, which suit was dismissed by 5th Jt. Civil Judge, Junior Division, by judgment and decree dated 30.07.2013. There was delay on the part of the plaintiff to prefer an appeal. Hence, the plaintiff made application below exhibit 1 in Civil Misc Application No.31/2014 for condonation of 61 days delay in preferring the appeal which was allowed by the trial court on payment of cost. Therefore, court also extended time for payment of costs. Hence, the Civil Revision Application.

4. The learned counsel for the defendant submits that the appellate court erred in coming to the conclusion that the plaintiff shown sufficient cause for condonation of 61 days delay. He submits that in an application for condonation of delay, the plaintiff has taken ground that she was suffering from chronic obstructive pulmonary disease from 27.1.2013 to 01.02.2013 i.e. for a period of 4 days whereas the trial court passed judgment and decree dated 30.07.2013. Therefore, the reason given by the plaintiff in her application for condonation of delay cannot be considered as sufficient cause. The plaintiff applied for certified copies of the judgment and decree on 01.08.2013. Same was ready for delivery on 03.09.2013. It was collected on 04.09.2013. He submits that though the certified copies were collected on 04.09.2013, the appeal was preferred on 03.12.2013. There is no explanation for a period of 04.09.2013 to 03.12.2013.

5. The learned counsel for the defendant submits that the appellate court, by order dated 24.08.2015 allowed the application made by the plaintiff for condonation of delay and imposed cost of Rs.1000 which was to be paid within 7 days. He submits that the plaintiff failed and neglected to pay the said amount within stipulated time. Thereafter, the plaintiff made application below exhibit 16/2 in Civil Misc. Application No.31/2014 under section 148 and 151 of Code of Civil Procedure, 1908 which was also allowed by the appellate court. He submits that as the plaintiff failed and neglected to disclose sufficient cause for condonation of delay, hence, the impugned order passed by the appellate court is liable to be set aside.

6. Heard the learned counsel for the defendant.

7. It is to be noted that, in the present proceedings the plaintiff is 79 years old. She was suffering from chronic obstructive pulmonary disease.

8. 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."

9. Though the appellate court, by order dated 24.08.2015 directed the plaintiffs to deposit cost of Rs.1000 within 7 days i.e. on or before

31.08.2015, there was delay on the part of the plaintiff. Hence, the plaintiff made application for extension of time. The plaintiff in her application stated that the amount was handed over to her advocate to comply with the order dated 24.08.2015. Inadvertently, her advocate failed to deposit the same amount immediately. Considering these facts, the appellate court allowed her application below exhibit 16/2 by order dated 15.10.2015 imposing further cost of Rs.1500/-.

10. Considering the reasons disclosed by the plaintiff in the application for condonation of delay and for extension of time to pay cost and the law declared by the Apex Court, I am of the opinion that the plaintiff has made out a case for condonation of delay and same was upheld by the appellate court. Hence, I do not find any reason to interfere with the impugned order.

11. Civil Revision Application stands rejected.

(K.K. TATED, J.)