

FARAD CONTINUATION SHEET
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO.388/2016

Vishal Shivaji Lade ... Applicant

Vs.

Vimal Vishal Lade ... Respondent

Mr. S. R. More i/b. V. S. Talkute for the applicant

CORAM : K. K. TATED, J.
DATE : AUGUST 4, 2016

P.C.:

1. Heard. By this Civil Revision Application, the applicant husband challenges the order dated 29.10.2015 passed by the District Judge-1 Pandharpur below Exhibit- 16 in Civil Misc Application No.119/2012 condoning the delay of 186 days in filing the appeal challenging the judgment and decree dated 29.03.2012 passed by the Civil Judge, Senior Division Pandharpur in Divorce Petition No.107/2007.

2. The learned counsel for the applicant submits that the court below failed to consider the fact that the respondent wife failed to disclose sufficient cause for condonation of 186 days delay in filing the appeal. The applicant challenges the said order on following grounds:

(A) It is submitted with respect that impugned judgment and order passed by the learned lower Appellate Court suffers from serious infirmities of law and facts as demonstrated hereinabove

and therefore, unsustainable in law and therefor, deserves to be quashed and set aside.

(B) It is submitted with respect that the learned lower Appellate Court committed serious jurisdictional error in deciding the application for condonation of delay mechanically and without application of its judicious mind and casually passed the impugned order without even analyzing the reasons in the application for condonation of delay, especially when the applicant has challenged the said averments by filing a reply and therefore the impugned order suffers from material illegality and irregularity in exercise of discretionary jurisdiction by the learned lower Appellate Court.

(C) It is submitted with respect that the learned lower Appellate Court has not recorded any finding that there was any sufficient cause for condonation of delay.

(D) It is submitted with respect that even assuming the reasons in the said application are taken as true, the learned lower Appellate Court has committed serious error of law in interpreting the same to amount to sufficient cause within the meaning of section 5 of the Limitation Act.

(E) It is submitted with respect that the reasons made out in the application for condonation of delay are patently false to the knowledge of the respondent and it is borne out from the evidence and material on record that the respondent had chosen to remain absent only from the time she was directed to appear before the civil surgeon for medical examination. It is submitted that the approach of the learned lower Appellate Court in allowing the said application has occasioned a total miscarriage of justice.

(F) It is submitted with respect that the learned lower Appellate Court has committed gross error in exercise of its jurisdiction by accepting the bald statement of the respondent that she had no income and that she was sick without there being any documentary proof of either aspects, therefore, the said finding by the learned lower Appellate Court is perverse.

(G) *It is submitted with respect that the findings of the learned lower Appellate Court are otherwise illegal, contrary to evidence on record and against well settled principles of law.*

3. The learned counsel for the applicant submits that as the respondent failed to show sufficient cause for condonation of delay, the impugned order is liable to be set aside.

4. In the present proceedings, the respondent wife filed application for condonation of delay in filing the appeal before the District Court on the ground that she was not keeping well and the applicant husband failed to deposit and/or pay the entire maintenance amount as awarded by the court.

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 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."

6. Considering the reasons given by the Trial Court and the law laid down by the Apex Court as stated hereinabove, I do not find any substance in the Civil Revision Application. Same stands rejected.

JUDGE