

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

WRIT PETITION NO.6391 OF 2016

Y.J.Master

.. Petitioner

vs.

Sr.Inspector & Others

.. Respondents

Mr.Y.J.Master, petitioner present in person

Ms.Pradnya Bansode for the respondents

CORAM : K. K. TATED, J.

DATE : JUNE 28, 2016

P.C.:

1 Not on board. At the request of petitioner party in person, matter is taken on board for urgent orders.

2 Heard.

3 By this petition under Article 227 of the Constitution of India the Petitioner plaintiff is challenging the order dated 30.3.2016 passed by Civil Judge, Senior Division Kalyan below Exhibit-16 and 20 in Special Civil Suit No. 149 of 2015 allowing respondent defendants' application for condonation of delay in filing Written Statement on record and setting aside "No Written Statement" order passed against them.

4 Petitioner party in person submits that he filed Special Civil Suit No. 149 of 2014 in the court of Civil Judge, Senior Division, Kalyan claiming damages of Rs.29.0 lacs from the respondent defendant for malicious prosecution against him. He submits that there was delay on the part of defendant for filing written statement. Same was allowed by the Trial Court without considering his reply to the application below Exhibit-16 and 20. He further submits that Trial Court granted cost of Rs.3,000/- only. He submits that Trial Court ought to have granted cost of Rs.10,000/- from each defendant. He submits that hence, order passed by Trial Court dated 30.3.2016 is required to be set aside.

5 On the other hand, the learned counsel for the respondent defendant vehemently opposed the present Writ Petition. He submits that delay in filing of written statement was explained by them in their application. Same was satisfactory and hence Trial Court condoned the delay and allowed defendants to file their written statement. She submits that considering the the subject matter of the plaint, Trial Court imposed cost of Rs.3,000/-. She submits that cost is already paid. Hence, there is no substance in the present matter. She further pointed out that in reply filed by the plaintiff to their application below Exhibit-16 and 20, it was specifically stated that plaintiff has no objection to condone the delay on condition to pay cost of Rs.10,000/-. Hence, there is no substance in the present Writ Petition and same to be dismissed with costs.

6 I have heard party in person plaintiff and advocate for respondent. The Trial Court considering the reason given by the

defendant in their application condoned the delay of 120 days in filing the written statement.

7 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.”

8 Considering the reason given by the Trial Court in the impugned order dated 30.3.2016, issues were not framed by Trial Court till passing of impugned order and the law declared by the Apex Court as stated hereinabove, I do not find any substance in the present Writ Petition. Same is dismissed. No order as to costs.

9 Liberty granted to the party in person to make appropriate application in the Trial Court for early hearing of suit. That application be decided by Trial Court on its own merits.

JUDGE