

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

CIVIL APPLICATION 2 OF 2016
IN
REVIEW PETITION (ST) NO.18258 OF 2009
IN
CIVIL APPLICATION NO.1219 OF 2006
IN
WRIT PETITION NO.4420 OF 1996

Sadashiv Vasantryao Kashid
since deceased through legal heirs
Sunita Sadashiv Kashid and Ors.

.. Applicants

vs.

Chandrakant Mahadeo Dalavi and Anr.

.. Respondents

Mr.G.S.Godbole i/b Mr.S.M.Railkar for the applicants

Mr.Chetan G. Patil for the respondent no.1

None for the respondent no.2

CORAM : K. K. TATED, J.
DATE : APRIL 20, 2016

P.C.:

1 Not on board. By consent of both the parties, matter is taken on board for hearing.

2 Heard the learned counsel for the parties.

3 Advocate for the applicant submits that they already served respondent no.2. He further submits that advocate Salman A. Khan is appearing for respondent no.2.

4 This application is for condonation of 144 days delay in filing the Review Petition to review the order dated 28.1.2009 passed by this court in Civil Application No.1219 of 2006.

5 The learned counsel for the applicant submits that as soon as the order passed by this court on 28.1.2009 in Civil Application No.1219 of 2006 advocate on record immediately forwarded letter to the applicant. He submits that the said letter was never received by the applicant. He submits that when the applicant contacted advocate on record in the 3rd week of June 2009 at that time, applicant learnt about the order passed by this court and decided to file Review Petition. Hence, there is a delay on the part of the applicant to file Review Petition. In support of this contention, the learned counsel for the applicant relies on paragraph 10 of the Civil Application. He submits that in the interest of Justice, this Hon'ble Court be pleased to condone the delay and Review Petition be heard on its own merits. He submits that applicant has good chance of success in the Review Petition.

6 On the other hand, the learned counsel for respondent no.1 vehemently opposed the present Civil Application. He submits that applicant is preferring Civil Applications on one or the other ground to prolong the hearing of Writ Petition No.4420 of 1996 which was expedited by this court. He submits that the reason given by this court

in paragraph 10 does not disclose sufficient cause for condonation of 144 days delay in filing Review Petition. Hence, there is no substance in the present Civil Application and same be dismissed with costs.

7 I have heard both the sides at length. 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 submissions made by the learned counsel for the Applicant and the reasons disclosed in paragraph 10 of the Civil Application, I am satisfied that the Applicant has made out a case for allowing the present Civil Application. But at the same time, applicant have to pay cost of Rs.2500 to the respondent no.1. Hence, following order:

- a) Civil Application is allowed in terms of prayer clause (a) which reads thus:

“Delay of about 144 days caused in preferring the Review Petition be condoned in the interest of justice on such terms and conditions as this Hon'ble Court may deem fit and proper.”

- b) Applicant either to deposit in the Registry or pay directly to the respondent no.1 or their advocate cost of Rs.2500 within two weeks from today, failing which Civil Application shall stand dismissed without referring back to the court.
- c) Office is directed to place Review Petition on board for admission on 13.6.2016.
- d) Liberty granted to the respondent to file Affidavit-in-Reply if any or before 7.6.2016 and serve copy on the other side.
- e) Civil application stands disposed off accordingly.

JUDGE