

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

CIVIL APPLICATION NO.1147 OF 2015
IN
FIRST APPEAL (ST) NO.18195 OF 2014

Ravilal Rudka Rajput .. Applicant

vs.

Municipal Corporation of Greater Mumbai & Ors. .. Respondents

Ms.Geeta Mulekar for the applicant

Mrs.M.R.Bhoir for the B.M.C.

Mr.M.A.Sayyed for the respondent nos.2 and 3

CORAM : K. K. TATED, J.
DATE : MARCH 04, 2016

PC.:

1 Heard the learned counsel for the parties.

2 This application is preferred by plaintiff for condonation of 180 days delay in filing First Appeal challenging the judgment and decree dated 27.11.2013 passed by Bombay City Civil Court, Mumbai in L.C.Suit No.1270 of 2009 by which the plaintiff's suit stand dismissed.

3 The learned counsel for the applicant submits that applicants are Senior Citizen. When they learnt about the judgment and decree

passed by Trial Court they immediately applied for certified copies on 28.1.2014. Same was ready for delivery on 25.2.2014. He submits that thereafter applicant filed present First Appeal in this court on 2.7.2014. She further submits that because of financial difficulty, applicant took some time to file present First Appeal. She submits that applicant has good chance of success in the present First Appeal. She submits that if delay is not condoned, irreparable loss and injury will be caused to the applicant. Hence, delay in preferring First Appeal may be condoned.

4 On the other hand, the learned counsel for the respondent nos.2 and 3 vehemently opposed the present Civil Application. He submits that applicant has not shown sufficient cause for condonation of more than 180 days delay in filing First Appeal. He submits that in entire Civil Application applicant has not shown reason why they applied for certified copies on 28.1.2014. Hence, there is no substance in the present Civil Application and same be dismissed with costs.

5 Heard both the sides.

6 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.”

7 Considering the fact that applicants are Senior Citizen and they were facing financial crises, I am of the opinion that applicant has made out case for allowing Civil Application but at the same time applicant has to pay cost of Rs.750/- each to respondent no.1 as well as respondent nos.2 and 3 within four weeks from today, failing which Civil Application shall stand dismissed without referring back to the court. Hence, following order is passed:

A) Civil Application is allowed in terms of prayer clause (b) which reads thus:

“(b) The Delay of about 180 days caused in filing present First Appeal may kindly be condoned.”

B) Applicant to pay sum of Rs.750/- each to respondent no.1 as well as respondent nos.2 and 3 by way of cost within four weeks from today, failing which Civil Application shall stand dismissed without referring back to the court.

C) In the alternative, applicant is permitted to deposit amount in the Registry within stipulated time as stated hereinabove.

D) If amount is deposited in the Registry within stipulated time as stated hereinabove, respondents are entitled to withdraw the same without furnishing any security.

E) Civil application stands disposed off accordingly.

JUDGE