

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

CIVIL APPLICATION NO.1066/2015
IN
FIRST APPEAL (ST) NO. 19387/2014
WITH
CIVIL APPLICATION NO.1067/2015

Office Notes, Office Memoranda of Coram, Appearances, court's orders or directions and Registrar's orders	Court's or Judge's orders
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Mrs. M. R. Bhoir for the Applicant
Mr. T. C. Deshpande with Vasant D. Dhavan for the Respondent

CORAM : K. K. TATED, J.
DATE : JANUARY 15, 2016

P.C.:

1. Heard. This Application is made by Municipal Corporation for condonation of 1 year 52 days delay in preferring the appeal challenging the judgment and decree dated 18/04/2013 passed by the Small Causes Court, Mumbai in Municipal Appeal No.284/2002.

2. The learned counsel for the Applicant submits that immediately after the judgment and decree passed by the Trial Court, they applied for certified copy on 24/04/2013 and same was ready for delivery on 25/04/2013. She submits that the

Corporation has constituted appeal committee to verify whether the matter is fit to prefer an appeal so that they can minimize the litigations. After receipt of the same, they immediately forwarded the same to the appeal committee for their say, to examine whether the appeal to be filed or not. She submits that the appeal committee took some time to scrutinize the judgment and award. Thereafter they decided to file the appeal. Immediately after the committee decided to file an appeal in this court, the law department forwarded the papers to the concerned advocate for drafting the appeal memo. In the meantime, the law department also handed over papers to the concerned typist for typing relevant papers for filing the appeal in this court. She submits that in this process, there is delay in preferring the appeal.

3. The learned counsel for the Applicant submits that to file an appeal, the Corporation has to take decision at several level including the opinion of the appeal committee. Apart from that, the clerical staff also took some time to prepare typed copies of the papers and proceedings. She submits that the Applicant has good chance of success in the matter. She submits that in the interest of justice this Hon'ble Court be pleased to

condone the delay in preferring the First Appeal and matter be heard on merits.

4. On the other hand, the learned counsel for the Respondent vehemently opposed the Civil Application. She submits that the Respondent filed Affidavit-in-Reply dated 17/08/2015 to oppose the Civil Application. The learned counsel for the Respondent submits that the Applicant has not shown sufficient cause as to why there was delay of more than 1 year in preferring the First Appeal. He submits that even the Applicant has not given relevant dates as to when the matter was forwarded to the appeal committee, when the appeal committee has taken decision to file the appeal. He submits that for want of explanation on the part of the Applicant, they are not entitled to any relief in the Civil Application. He submits that this court, in the matter of ***Vasant Vithal Gawand Vs. Shantaram Tukaram Gawand 2016(1) Mh.L.J. 89*** dismissed the Application for condonation of delay of 1 year and 2 months for want of sufficient explanation. He further relied on the judgment in the matter of ***Municipal Corporation of Greater Mumbai Vs. Prabhawati Harkishindas Gehani and Ors. 2006(4) Mh. L.J. 103***. He submits that if proper explanation is not

given by the Applicant to show sufficient cause for condonation of delay, then the court should not entertain the Application. On the basis of this submission and the authorities cited above, the learned counsel for the Respondent submits that the Applicant failed to show sufficient cause for condonation of delay of more than 1 year in filing the appeal. Hence, the Civil Application be dismissed with costs.

5. Heard the learned counsel for the parties. The first thing we have to keep in mind that the appeal is filed by the Municipal Corporation. The Municipal Corporation have to take decisions at several level. Hence, the Municipal Corporation has constituted the appeal committee to scrutinize the appeal proposal. These facts are stated by the Applicant in paragraph 4 of the Civil Application. Apart from that, it is stated that immediately after the Trial Court passed the impugned order, the Municipal Corporation made an Application for certified copy on 24/04/2013 i.e. within a week. This itself shows that they had an intention to file the First Appeal in this court after the appeal committee approves their proposal. The authority relied on by the Respondent-Claimant in the matter of Vasant Gawand (supra) is not applicable in the

present case, because in that case, the court held that the Applicant failed to show sufficient cause. Similarly, the authority cited by the Respondent in the matter of Prabhawati Gehani (supra) is also not applicable. In that case the Municipal Corporation failed to file an Application for certified copies within limitation. Moreover, the Corporation failed to disclose sufficient cause in their Application. Hence, in that case, the court dismissed the Application for condonation of delay. This is not a case in hand. The Corporation filed Application for certified copy within a week from the date of impugned judgment in the matter.

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 ut 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. The Apex Court in the matter of ***Om Construction Co. Vs. Ahmedabad Municipal Corporation & Anr. JT 2009 (1) SC 274*** condoned the delay of 872 days.

8. Considering the above mentioned facts and the law declared by the Apex Court I am of the opinion that the Applicant has shown sufficient cause for condonation of delay. At the same time, the Applicant has to pay cost to the Respondent. Cost is quantified to Rs.10,000/-.

9. Hence, the following order is passed:

a. Delay of 1 year and 52 days in filing the First Appeal is condoned.

b. The Applicant, either to pay to the Respondent or deposit in the Registry sum of Rs.10,000/- by way of costs within 4 weeks from today, failing which the Civil Application shall stand dismissed without further reference to the court.

c. If cost is deposited in the Registry, the Respondent is entitled to withdraw the same without furnishing security.

d. Civil Application stands disposed off accordingly.

JUDGE