

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

CIVIL REVISION APPLICATION NO.874/2014

The Construction & Development
Company, through its partners ... Applicants

Vs.

Pune Municipal Corporation & Ors. ... Respondents

Mr. S. S. Patwardhan for the applicant
Mr. Abhijeet P. Kulkarni for the respondent Nos.1 to 3.

CORAM : K. K. TATED, J.
DATE : JULY 12, 2016

PC.:

1. Heard. By this Civil Revision Application, the plaintiff is challenging the order dated 04.07.2014 passed by the District Judge 8, Pune in Civil Misc Appeal No.482/2014 condoning the delay of 313 days in filing the appeal filed by the respondent defendant challenging the judgment and decree passed by the Civil Judge, Junior Division, (PMC) Court Pune in Regular Civil Suit No. 1557/2005 dated 31.07.2013.

2. The learned counsel for the plaintiff submits that the courts below failed to consider the fact that the respondent defendant failed to show sufficient cause for condonation of 313 days delay in filing the appeal. The learned counsel for the plaintiff submits that initially, they filed Regular Civil Suit No. 57/2004 in the court of Civil Judge, Junior

Division, (PMC) Pune for declaration that the stop work notice dated 07.10.2003 issued by defendant respondent was illegal and ultra vires and not binding on the plaintiff. He submits that Regular Civil Suit No. 57/2004 was decided by the trial court on merits on 31.08.2010 declaring that the stop work notice issued by the defendant corporation dated 07.10.2003 was illegal and void. The operative part of the said order reads thus:

- “1. Suit is decreed.*
- 2. It is hereby declared that the stop work notice issued by defendant corporation dated 07.10.2003 is illegal and void.*
- 3. It is further declared that the plaintiff is entitled to carry out construction of all the buildings as per sanctioned plan over the said property including remaining buildings i.e. E to J and L.*
- 4. Defendants are permanently restrained from acting, enforcing and implementing the said stop work notice dated 07.10.2003.*
- 5. Defendants are hereby restrained from prohibiting plaintiff from carrying out development and construction work of building Nos.E, F, G, H, I, J and L subject to condition that the construction of buildings is carried out as per sanctioned plan and as per the provisions of the D.C.Rules and regulations.*
- 6. Parties to bear their own costs.*
- 7. Decree be drawn up accordingly.”*

3. The learned counsel for the plaintiff submits that the defendant thereafter issued another notice in respect of the same portion of the property where the plaintiff carried out construction activities. That was challenged by the plaintiff by another suit being Regular Civil Suit

No. 1557/2000 in the court of Civil Judge, Junior Division, (PMC), Pune. He submits that in that suit, the defendant failed and neglected to file their written statement. He submits that the suit was decreed by the trial court on 31.07.2013.

“ORDER

1. *The suit is decreed.*
2. *It is hereby declared that the revised lay out and revised building plans in respect of building Nos. G and H are deemed to have been sanctioned with effect from 18.11.2004.*
3. *It is hereby declared that the plaintiff is entitled to carry out the construction in respect of the building Nos. G and H according to the said deemed sanctioned plans and that the defendants are bound to issue copies of sanction lay out and sanction building plans in respect of building Nos.G and H to the plaintiff.*
4. *It is hereby declared that, the completion certificate in respect of building Nos.D and K & E and F are deemed to have been granted with effect from 08.01.2004 and 27.04.2004 respectively.*
5. *It is hereby declared that the letter dated 20.09.2005 issued by the defendants to the plaintiff is illegal, void ab-initio and not binding on the plaintiff.*
6. *The defendants are directed by mandatory injunction to issue the copies of revised lay out and revised building plans in respect of building Nos.G and H and to issue the copies of the completion certificate to the plaintiff in respect of building Nos. D, K, E and E.*
7. *The defendants are permanently restrained from obstructing the plaintiff from carrying out the construction on the suit property in respect of building Nos. G and H and from implementing and giving effect to the said letter dated 20.09.2005.*

8. *Parties to bear their own costs.*
9. *Decree be drawn up accordingly.”*

4. The learned counsel for the applicant submits that as the defendant failed and neglected to comply with the judgment and decree dated 31.07.2013, the plaintiff preferred Regular Darkhast No.185/2013. He submits that the court officer visited the respondent defendant's office for complying with the judgment and decree passed by the trial court. Thereafter the defendant filed the appeal before the District Court on 09/06.2014 and made the Misc. Civil Application No.482/2014 for condonation of delay of 313 days. He submits that plaintiff filed Affidavit-in-Reply dated 30.06.2014 placing on record, the way in which the defendant conducted the proceedings before the trial court. He submits that without considering the reply filed by the plaintiff, the learned District Court allowed the application made by the defendant for condonation of delay by the impugned order dated 04.07.2014. As the said order is passed by the District Court without considering the fact that the defendant failed to show sufficient cause for condonation of delay of 313 days, same is liable to be set aside. He submits that if at this stage, the delay in filing the appeal is condoned, irreparable loss and injury will be caused to the plaintiff.

5. On the other hand, the learned counsel for the respondent defendant vehemently opposed the Civil Revision Application.

6. The learned counsel for the respondent defendant submits that the learned District court has considered the application in which it was

stated that during that period the respondent corporation's staff was busy in election duties. Apart from that the Advocate who was engaged to defend on behalf of the corporation , was retired due to old age and as such the matter remained unattended. He submits that the defendants learnt about the judgment and decree passed by the trial court in the month of December 2013. Thereafter they immediately instructed their advocate to take steps and file an appeal. He submits that because of mistake on the part of the Advocate, a litigant should not suffer. These facts were considered by the District Court and allowed their application for condonation of delay. There is no substance in the Civil Revision Application. Same be dismissed with costs.

7. Heard the learned counsel for the parties. It is to be noted that, in the present proceedings there is delay of 313 days on the part of the corporation to file the appeal. In the application for condonation of delay, the corporation has specifically stated in para 3 that their staff was busy in election duties and in para 5 they stated that the Advocate who was appointed on behalf of them was not well due to old age. Paragraph 3 and 5 of the application reads thus:

3. It is submitted that the concerned staff member of the applicant was busy in election duty and for other over burden office work, necessary approval from the Commissioner was not able to obtained within limitation till filing the present appeal. Hence, applicant is not able to file appeal within limitation. The applicant submits that if the present application is not allowed then the subject matter of the appeal will not be decided on merit and there is permanent irreparable loss to the applicant who is local body.

5. The applicant respectfully submits that the advocate of the PMC panel who appeared and conducted the civil suit before the lower court, was retired due to old age and as such the matter was remained unattended. Further the entire staff of administration of PMC was loaded with the work of General Election 2014. Moreover, the internal communication of legal departmental and building department was held up. Hence, obtaining permission to file appeal as well as supply of certified copies to concerned department was delayed.”

8. 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."

9. Considering the reasons given by the learned District Court at the time of allowing the Civil Misc. application No.482/2014 and the law declared by the Apex Court, I do not find any substance in the Civil Revision Application . Same stands rejected. No order as to costs.

JUDGE