

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

WRIT PETITION NO.4654 OF 2016

Smt.Suman Vishnu Deshmukh .. Petitioner

vs.

Mr.Ketan Anant Deshmukh and Others .. Respondents

Mr.Rohit D. Joshi for the petitioner

Mr.Omkar Gupte for the respondent nos.1 to 5

CORAM : K. K. TATED, J.
DATE : JUNE 28, 2016

P.C.:

1 Heard the learned counsel for the parties.

2 By this petition, under Article 227 of the Constitution of India, petitioner org.defendant no.1 challenges the order dated 4.8.2015 passed by Ad-hoc District Judge-1 & Asstt.Sessions Judge, Raigad-Alibag in Civil Misc. Application No.66 of 2015 filed by plaintiff for condoning delay in filing Appeal challenging the order passed by Trial Court dated 14.2.2014.

3 In the present proceeding, Trial Court passed order on 14.2.2014. Plaintiff applied for certified copies on 13.3.2014. Same was collected

on 16.3.2014. Thereafter, plaintiff filed Writ Petition in High Court on 10.4.2014. Same was withdrawn on 3.3.2015 with liberty to file appropriate proceeding before the lower appellate court. The plaintiff filed appeal before the Appellate Court and filed application for condonation of delay on 19.3.2015.

4 Considering the fact that matter was pending before this court in Writ Petition and the reason given by plaintiff in their application for condonation of delay, Trial Court passed impugned order dated 4.8.2015. Trial Court also directed plaintiff to pay cost of Rs.1,500/- each to the defendant nos.1 to 5.

5 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."

6 Considering the reason given by lower appellate Court and the law declared by the Apex Court in the matter of ***N.Balkrishnan Vs. M. Krishnamurthy (1998) 7 SCC 123*** (Supra), I do not find any reason to interfere with the order passed by appellate court dated 4.8.2015.

7 Hence, Writ Petition stands dismissed.

JUDGE