

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.79 OF 2015
IN
FIRST APPEAL (ST) NO.27014 OF 2014

Premeir Galvanizers and Anr. ... Applicant

V/s.

Mr.Ashok Hirachand Jain ... Respondent

Mr.R.S.Apte, Sr.Counsel with Ms.Aparna A.Dhawale for the Applicant

Mr.Kiran Jain with Mr.Ish Jain i/b M/s.Kiran Jain and Co. for the Respondent.

CORAM: K.K. TATED, J.
DATED : FEBRUARY 29, 2016

PC. :

1 Heard the learned Senior Counsel for the applicant and the learned counsel for the respondent.

2 This application is preferred by defendants for condonation of 424 days delay in filing First Appeal challenging the judgment and decree dated 4.5.2013 passed by Bombay City Civil Court, Mumbai in Summary Suit No.3430 of 2012 (High Court Summary Suit No.1352 of 2012).

3 The learned Senior Counsel for the applicant submits that when the decree was passed by the Trial Court no one appeared on behalf of the applicant. He submits that thereafter immediately they preferred Notice of Motion No.2699 of 2013 for setting aside the ex-parte order. He submits that the said Notice of Motion was decided by the Trial Court on 5.4.2014 and dismissed the same. Thereafter the applicant immediately applied for certified copy on 14.8.2014 and same was ready on 25.8.2014. He submits that the applicant filed the First Appeal in this court on 29.9.2014.

4 The learned Senior Counsel for the applicant submits that applicant has good chance of success in the present matter. He submits that actually there is a delay of 150 days in filing the First Appeal if delay is calculated from the date of order passed by Trial Court in Notice of Motion No.2699 of 2013 i.e. 5.4.2014. The learned Senior Counsel for the applicant submits that in the meanwhile, the applicant was not keeping well and therefore there is a delay on their part. He further submits that because of financial crises applicant took some time to file the present First Appeal in this court. The learned Senior Counsel for the applicant submits that in the interest of Justice this Hon'ble Court be pleased to condone the delay and matter be heard on its own merits. He submits that if delay is not condoned, irreparable loss will be caused to the applicant.

5 On the other hand, the learned counsel for the respondent defendant vehemently opposed the present Civil Application. Respondent filed their Affidavit-in-Reply. The learned counsel for the

respondent submits that initially they preferred Summons for Judgment. He submits that the Trial Court heard the Summons for Judgment on 26.3.2013 and same was kept for orders on 1.4.2013. He submits that by order dated 1.4.2013 Summons for Judgment was made absolute by the Trial Court. On that date, suit was adjourned for verifying the original documents. He submits that thereafter the respondents filed the original documents and Trial Court passed the impugned judgment and decree dated 4.5.2013. He submits that on 4.5.2013 also no one appeared on behalf of applicant defendant. He submits that though the Notice of Motion was dismissed by the Trial Court on 5.4.2014 the applicant defendant filed application for certified copies on 14.8.2014. There is no explanation why the applicant took more than 3 ½ months for filing the application for certified copies. The learned counsel for the respondent submits that the reason given by the applicant in their Civil Application that the applicant was not keeping well is not correct. He submits that the applicant was attending on each and every date in criminal matter before the learned Metropolitan Magistrate at Girgaon. He further submits that financial crises cannot be a ground for condonation of delay. Hence, there is no substance in the present Civil Application and same be dismissed with costs.

6 I have heard both the sides at length. It is to be noted that as soon as the Trial Court passed decree on 4.5.2013 applicant preferred Notice of Motion No.2699 of 2013 on 25.7.2013 for setting aside ex-parte decree. That Notice of Motion was dismissed after hearing both the sides on 5.4.2014 and thereafter the applicant applied for certified

copies and filed the present First Appeal in this court on 29.9.2014. The applicant has given reason in present Civil Application about his health as well as financial crises. It is to be noted that if we calculate delay from the date of dismissal of Notice of Motion then the delay cannot be more than 150 days.

7 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 reason disclosed by the applicant in paragraph 7, 10 and 11 of Civil Application, I am satisfied that the applicant has made out a case for condonation of delay. But at the same time, they have to pay cost of Rs.25,000/- to the respondent plaintiff within two weeks from today failing which Civil Application shall stand dismissed without referring back to the court. Hence, following order is passed:

a) Delay in filing First Appeal challenging the judgment and decree dated 4.5.2013 is condoned.

- b) Applicant either to pay to the respondent or their advocate or deposit in the Registry sum of Rs.25,000/- by way of cost within two weeks from today, failing which Civil Application shall stand dismissed without referring back to the court.
- c) If cost is deposited in the Registry, respondent plaintiff is entitled to withdraw the same without furnishing any security.
- d) Civil application stands disposed off accordingly.

(K.K. TATED, J.)