

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

WRIT PETITION NO.564 OF 2016

Ram Ganesh Gadkari Sahakari
Sakhar Karkhana Ltd. & Ors.

.. Petitioners

vs.

Mumbai District Central Co-operative
Bank Ltd. and Ors.

.. Respondents

Mr.Abhijeet A. Desai for the petitioners

Mr.Sampatrao Pawar for the respondent no.1

Mr.Sagar Patil h/f Mr.Shridhar Anandrao Patil for the respondent no.2

CORAM : K. K. TATED, J.

DATE : JULY 28, 2016

P.C.:

1 Heard the learned counsel for the parties.

2 By this petition under Article 227 of the Constitution of India, the Petitioners original opponents challenges the order below Exhibit-1 in M.A.No.21 of 2015 dated 31.8.2015 passed by President, Co-operative Appellate Court, M.S., Mumbai dismissing their application for condonation of 5 months 12 days delay in filing appeal challenging the judgment and award dated 28.2.2014 passed by Co-operative Court No.1, Mumbai in Case No.CC/I/33/2010 holding that original opponent no.1 to 22 are jointly and severally liable to pay sum of

Rs.24,83,7224/- with future interest @ 15.5% p.a. till payment and realisation.

3 For the sake of convenience, the parties will be referred to as per their nomenclature in the case No.CC/I/33/2010 i.e.petitioner as opponent and respondent no.1 as disputant.

4 Disputant filed dispute to recover loan amount of Rs.24,83,7224/- before the Co-operative Court No.1, Mumbai. In that dispute, though the opponent appeared after service of summons, they failed to file their written statement. Therefore, Trial Court twice passed order of “no written statement”. To set aside that order, twice the opponents filed an application. Both the applications were dismissed by the Co-operative Court. Those orders were not challenged by the opponents. They filed their written submission. On the basis of written submissions, the Trial Court passed judgment and award dated 28.2.2014 holding that opponent no.1 to 22 are jointly and severally liable to pay decretal amount.

5 Therefore, as the opponent failed to pay the decretal amount, disputant filed Execution Application. In that they issued the recovery notice dated 8.9.2014. After receipt of the recovery notice, the opponents preferred Appeal before the Co-operative Appellate Court, Mumbai. As there was delay in filing appeal, they preferred application for condonation of 5 months 12 days delay. That application was filed on 13.10.2014 on the ground that first time they learnt about the judgment and award passed by Co-operative Court when they received the recovery notice. As soon as they received the recovery notice they immediately contacted their advocate and filed appeal. That took some

time and therefore, there was delay on their part to file appeal. In paragraph 2 and 4 of the said application the opponent explained the delay which reads thus:

“2. The Appellants submits that the judgment and award was passed by learned cooperative court on 28.2.2014 in dispute No.CC/I/33/2010. Pursuant to the said judgment and decree, Respondent No.1 the original disputant issued notice for recovery to the appellants dated 8.9.2014. After receipt of the notice dated 8.9.2014 for recovery, the appellants came to know about the Judgment and Decree passed by the learned Cooperative Court, Mumbai. Thereafter the appellants immediately approached their Counsel at Nagpur and take advise to collect all the papers in respect of the said dispute. The appellants have engaged the Counsel from Mumbai and therefore the time was consumed in collecting the papers from the said Counsel. The appellants are old aged persons not so physically fit to take speedy steps. The appellants are residing at different places at Nagpur and lots of time was taken to take the signature of all the appellants on Vakalatnama.

3. After receipt of the documents from Mumbai the appellants approach their Counsel and after perusal of the documents, the Counsel advice to file an appeal against the said order.”

6 The Disputant filed their Affidavit-in-Reply to the application for condonation of delay. Considering the submission of both the parties the Co-operative Appellate Court, Mumbai by impugned order dated 31.8.2015 rejected opponent's application for condonation of delay and hence, the present Writ Petition.

7 The learned counsel for the opponents submit that the appellate court erred in coming to the conclusion that, opponent failed and

neglected to disclose sufficient cause for condonation of 5 months 12 days in filing the appeal. He submits that the opponents are residing in Vidharba area. Matter was pending at Mumbai. Therefore, it took some time to contact their advocate since they had learnt about the judgment and award passed by Co-operative Court. He submits that some of the opponents are Senior Citizens and not keeping well. He submits that some opponents are illiterate. He further submits that advocate to whom they engaged to protect their interest failed to communicate the impugned judgment and award passed by Co-operative Court. Hence, there was delay on their part to prefer Appeal before the appellate court. He submits that if sufficient cause is shown, the court should condone the delay. He further submits that court should take liberal view at the time of deciding the application for condonation of delay. In support of this contention, he relies on the judgment of the Punjab-Haryana High Court in the matter of ***Dilbagh Singh vs. Collector Land Acquisition dated 15.3.2002***. He submits that in this authority, High Court held that at the time of passing order on application for condonation of delay, the court should take liberal approach. He relies on paragraph 9 and 12 which reads thus:

“9. We have given serious thought to the respective arguments. In our opinion, learned counsel for the appellant is correct in his submission that the view taken by the learned Single Judge on the issue of condonation of delay is contrary to the liberal approach reflected in the recent decisions of the Supreme Court and, therefore, the impugned order deserves to be set aside. The solitary reason assigned by the learned Single Judge for declining the appellant's prayer for condonation of delay appears to be that he had not contacted his lawyers from time to time. In this context, it is important to bear in mind that majority of people living in the rural areas of the country are illiterate and ignorant of their rights. They are also not aware of this intricacies of law and

proceedings in the Courts and Tribunals. Most of the time, they are busy in earning their livelihood and suffer injustice at the hands of all and sundry including the State. Therefore, while considering the plea for condonation of delay raised by a peasant or litigant coming from rural area, the Court has to adopt an extremely liberal approach, more-so when the case involves depriving the applicant of his source of livelihood. If the old and antiquated rule that each day's delay should be satisfactorily explained is applied in such cases, then grave injustice would be done to a majority of population living in rural India and persons like the appellant would be deprived of their legitimate right to seek justice.

12 In *M.K.Prasad v. P. Arumugam*, (2001) 6 S.C.C. 176, their Lordships of the Supreme Court reiterated the liberal approach in condonation of delay by recording the following observations:

"In construing Section 5 of the Limitation Act, the court has to keep in mind that discretion in the section has to be exercised to advance substantial justice. The court has a discretion to condone or refuse to condone the delay as is evident from the words "may be admitted" used in the section.

XX XX XX XX XX XX XX XX Even though the appellant appears not to be as vigilant as he ought to have been, yet his conduct does not, on the whole, warrant to castigating him as an irresponsible litigant. He should have been more vigilant but his failure to adopt such extra-vigilance should not have been made a ground for ousting him from the litigation with respect to the property, concededly to be valuable. While deciding the application for setting aside the ex pane decree, the court should have kept in mind the judgment impugned, the extent of the property involved and the stake of the parties."

8 On the basis of these submissions, the learned counsel for the

opponent submits that in the interest of justice this Hon'ble Court be pleased to allow the present Writ Petition by setting aside the impugned order dated 31.8.2015 and allow the opponent's application for condonation of delay in filing Appeal. He submits that if petition is not allowed, irreparable loss will be caused to them.

9 On the other hand the learned counsel for the respondent disputant vehemently opposed the present Writ Petition. He submits that the opponents failed and neglected to show sufficient cause for condonation of inadvertent delay of 5 months 12 days in filing appeal. He submits that the opponent made incorrect statement in their appeal memo as well as petition for condonation of delay. He submits that the opponents stated in their application as well as grounds in present petition that opponents are Senior Citizen and they are illiterate. That is not the case in the present proceeding. He submits that if the incorrect statement is made for obtaining favourable order, then said application be dismissed with costs. In support of this contention, he relies on the judgment of the Apex Court in the matter of ***Pundlik Jalam Patil (D) by Lrs. vs. Exe.Eng. Jalgaon Medium Project & Anr. 2008(6) ALL MR 954.*** In that authority, the Apex Court held that if incorrect statement is made in application to get rid of the bar of limitation then such application be dismissed.

10 The learned counsel for the disputant submits that in the present proceeding before the Co-operative Court twice the opponents made application for setting aside no written statement order. Though both the applications were rejected, they failed to challenge the said order. They proceeded with the matter without any written statement. Not only that they participated in the trial in full swing. They filed written

arguments and same were taken on record by the court. This itself shows that having full knowledge about the pendency of the proceedings, opponents failed and neglected to take appropriate steps to protect their interest. He submits that in application for condonation of delay, the opponents have given reason that opponents are Senior Citizen and illiterate person. That is not the fact on record. He submits that the opponents have not shown sufficient cause for condonation of delay of 5 months 12 days in filing Appeal. If sufficient cause is not shown, court should not entertain such applications. In support of this contention he relies on the judgment of Apex Court in the matter of *Basawaraj and Another vs. Special Land Acquisition Officer (2013) 14 SCC 81*. In that authority, the Apex Court held that 'Sufficient cause' cannot be liberally interpreted if negligence, inaction or lack of bonafides is attributed to the party. Even though limitation may harshly affect rights of a party but it has to be applied with all its rigour when prescribed by statute. He relies on paragraph 11, 12, 13 and 15 which reads thus:

“11. The expression "sufficient cause" should be given a liberal interpretation to ensure that substantial justice is done, but only **so long as negligence, inaction or lack of bona fides cannot be imputed to the party concerned**, whether or not sufficient cause has been furnished, can be decided on the facts of a particular case and no straitjacket formula is possible. (Vide: Madanlal v. Shyamlal AIR 2002 SC 100; and Ram Nath Sao v. Gobardhan Sao AIR 2002 SC 1201.)”

“12. It is a settled legal proposition that law of limitation may harshly affect a particular party but it has to be applied with all its rigour when the statute so prescribes. The Court has no power to extend the period of limitation on equitable grounds. "A result flowing from a statutory provision is never

an evil. A Court has no power to ignore that provision to relieve what it considers a distress resulting from its operation." The statutory provision may cause hardship or inconvenience to a particular party but the Court has no choice but to enforce it giving full effect to the same. The legal maxim "*dura lex sed lex*" which means "the law is hard but it is the law", stands attracted in such a situation. It has consistently been held that, "inconvenience is not" a decisive factor to be considered while interpreting a statute."

"13. The Statute of Limitation is founded on public policy, its aim being to secure peace in the community, to suppress fraud and perjury, to quicken diligence and to prevent oppression. It seeks to bury all acts of the past which have not been agitated unexplainably and have from lapse of time become stale. According to Halsbury's Laws of England, Vol. 28, p. 266:

605. Policy of Limitation Acts. The courts have expressed at least three differing reasons supporting the existence of statutes of limitations namely, (1) that long dormant claims have more of cruelty than justice in them, (2) that a Defendant might have lost the evidence to disprove a stale claim, and (3) that persons with good causes of actions should pursue them with reasonable diligence.

An unlimited limitation would lead to a sense of insecurity and uncertainty, and therefore, limitation prevents disturbance or deprivation of what may have been acquired in equity and justice by long enjoyment or what may have been lost by a party's own inaction, negligence' or laches. (See: Popat and Kotecha Property v. SBI Staff Assn. (2005) 7 SCC 510; Rajendra Singh v. Santa Singh AIR 1973 SC 2537; and Pundlik Jalam Patil v. Jalgaon Medium Project (2008) 17 SCC 448)."

"15. The law on the issue can be summarised to the effect that where a case has been presented in the court beyond limitation, the applicant has to explain the court as to what was the "sufficient cause" which means an adequate and

enough reason which prevented him to approach the court within limitation. In case a party is found to be negligent, or for want of bonafide on his part in the facts and circumstances of the case, or found to have not acted diligently or remained inactive, there cannot be a justified ground to condone the delay. No court could be justified in condoning such an inordinate delay by imposing any condition whatsoever. The application is to be decided only within the parameters laid down by this Court in regard to the condonation of delay. In case there was no sufficient cause to prevent a litigant to approach the court on time condoning the delay without any justification, putting any condition whatsoever, amounts to passing an order in violation of the statutory provisions and it tantamounts to showing utter disregard to the legislature.”

11 The learned counsel for the disputant also relies on the judgment of the Apex Court in the matter of *M/s.Gmg Engineering Industries & Ors. vs. M/s.Issa Green Power Solution & Ors. 2015(4) ALL MR 401 (S.C.)*. In that authority, the Apex Court held that unless and until sufficient cause is shown delay should not be condoned and if delay is condoned, court should impose some condition for decretal amount. He relies on paragraph 8 of the said authority which reads thus:

“8. It is well settled that the expression 'sufficient cause' is to receive liberal construction so as to advance substantial justice. When there is no negligence, inaction or want of *bonafide* is imputable to the Appellants, the delay has to be condoned. The discretion is to be exercised like any other judicial discretion with vigilance and circumspection. The discretion is not to be exercised in any arbitrary, vague or fanciful manner. The true test is to see whether the applicant has acted with due diligence.”

12 On the basis of these submissions and the authorities cited above, the learned counsel for the disputant submits that disputant Co-operative bank is to recover more than Rs.24 crores from the

opponents. Considering these facts, this court be pleased to dismiss the present Writ Petition with costs.

13 I have heard both the sides at length. I have gone through the copy of the judgment and award passed by Trial Court as well as appellate court and their proceedings. There is no dispute that in the present proceeding during the pendency of the dispute before the court, twice the court has rejected opponent's application for setting aside no written statement order. Those orders were not challenged by the opponent in higher court. Apart from that they filed written submission before the Co-operative Court. That itself shows that they participated in the trial and after hearing both the sides Co-operative Court passed judgment and award in favour of the disputant for recovery of sum of Rs.24,83,7224/-.

14 In the application for condonation of delay in filing appeal under section 97 of the Maharashtra Co-operative Societies Act, 1960 opponents have given reason about non communication of the judgment and award passed by the Co-operative Court by their advocate and old age of opposite parties. It is to be noted that cause title shows that all opponents are not Senior Citizen. Some of them are below 60 years also. Apart from that opponents have not given any cogent reason in their application for condonation of delay in filing Appeal.

15 Considering the judgment of the Apex Court in the matter of *Basawaraj and Another vs. Special Land Acquisition Officer* (Supra), *Pundlik Jalam Patil (D) by Lrs. vs. Exe.Eng. Jalgaon Medium Project & Anr.* (Supra) and *M/s.Gmg Engineering Industries*

& Ors. vs. M/s.Issa Green Power Solution & Ors. (Supra), I am of the opinion that opponent failed to show sufficient cause for condonation of inordinate delay of 5 months 12 days in filing Appeal under section 97 of the said Act. Therefore, I do not find any reason to interfere with the well reasoned order passed by Appellate Court.

16 Hence, Writ Petition stands rejected.

JUDGE