

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 11724 OF 2012

**The State of Maharashtra } Petitioner
 versus
M/s. Kings Furniture Works } Respondents**

Mr. V. A. Sonpal - Special Counsel for the
petitioner.

Ms. Nikita R. Badheka for the respondent.

**CORAM :- S. C. DHARMADHIKARI &
 A. A. SAYED, JJ.**

DATED :- MARCH 15, 2016

P.C. :-

- 1) This writ petition challenges the order passed on the
rectification application and which is dated 28th November,
2008.
- 2) The writ petition is filed on 18th October, 2012.
- 3) Mr. Sonpal learned Special Counsel appearing in
support of this writ petition relies upon para 10 and Exhibit 'G' at
page 35 to the writ petition to urge that the delay be condoned
and the writ petition be heard on merits.
- 4) Paragraph 10 of the writ petition and the chart at
page 35 Exhibit – 'G' to the paper book read as under:-

“10. The petitioner states that the impugned judgment and order was passed on 28.11.2008. Thereafter certified copy was ready and delivered on 5.1.2009. The petitioner being the Government Department was required to follow certain administrative procedure which consumed time. After decision of the Maharashtra Sales Tax Tribunal, Mumbai, the Petitioner has immediately submitted the proposal to the Government for sanction through proper channel. The Petitioner submits that after obtaining the requisite sanction vide letter dated 29.6.2009, and received by the office of the Government Pleader (AS) (Writ Cell) High Court Mumbai on 14.12.2010 earlier Writ Petition No. 5017/2012 was filed. The Petitioner respectfully and humbly submit that the delay, if any, caused in filing writ Petition was not deliberate or willful but procedural. The Petitioner was sincerely interested in prosecuting the Writ Petition. In the circumstances and also in the interest of justice, delay if any deserves to be condoned and writ petition be heard on merits. However to clarify and explain chronology of events which led to delay in filing the Writ Petition are explained in the tabular form and annexed here to and marked “**Exhibit-G**”. It is thus evident that the Petitioner diligently perused to file the said Petition but due to problems at different stage to further process the filing of the Petition, the Petition was delayed to be filed and it was not within the control of the Petitioner that the delay could be avoided. Therefore I say that there are no laches in filing the Petition.”

“EXHIBIT 'G'”

M/S. KINGS FURNITURE - W.P.NO. 5017/2012
Facts relating to delay in filing Writ Petition.

Sr. No.	Date	Events	Remarks
1.	28.11.2008	Judgment of MSTT IN Rect. Appln. No. 30 of 2440	
2.	05.12.2008	Date of receipt of the MSTT Judgment. By JC(L)	
3.	13.02.2009	Date of receipt of the Judgment With record by DC(CM)	

4.	14.05.2009	Date of the letter sent to Govt. In F. D. for seeking permission to file Writ Petition	
5.	10.07.2009	Date of the reply received from Govt.	
6.	16.07.2009	Date of the letter sent to Govt. Pleader of the Bombay High Court for drafting of W. P., original side	Letter wrongly sent to original side instead of Appellate Side
7.	17.08.2009	Date on which draft of Writ Petition received original side.	Wrongly received from original side instead of Appellate Side
8.	24.08.2009	Draft of Writ Petition Submitted to JC(Legal) for approval.	
9.	25.08.2009	JC(L) orders DC(CM) to verify the portion in draft containing para 6 having capital letters, correct factually and resubmit.	
10.	19.11.2010	Later on after receiving letter from Desk Officer (F. D.) it was found that the submission should have been made to the appellate side, then as per govt.'s letter the required documents for preparation of Draft para were sent to G. P. (Appellate Side) on 2.12.10.	
11.	23.11.2010	Date of the reply received from Govt. letter dt. 19.11.10	
12.	02.12.2010	Date of the letter sent to Govt. Pleader (Appellate Side), Bombay High Court for drafting of w.p.	

13.	03.12.2011	Letter sent to G. P. (Appellate) office, requesting to sent draft writ which was not received	
14.	22.12.2011	Letter sent to G.P. (Appellate) office requesting to sent draft writ which was not received.	
15.	26.12.2011	Date on which draft of Writ Petition received.	The draft of Writ Petition received from G. P. office nearly after gap of one year.
16.	27.12.2011	Date on which draft of W. P. Submitted to JC(L) for approval.	
17.	09.02.2012	Draft approved by Hon'ble CST	
18.	13.02.2012	Approved draft received from Hon'ble CST	
19.	21.03.2012	Synopsis recd. From Advocate	
20.	30.03.2012	Date of submission of W. P.	

”

5) The learned counsel appearing for the respondent submits that the above explanation is hardly satisfactory, much less reasonable. Reliance is placed upon the affidavit in reply filed to this writ petition and we see much substance in the contentions of Ms. Badheka on the point of delay.

6) There may not be a statutory prescription or a period of limitation prescribed for filing a writ petition under Article 226

of the Constitution of India. However, the principles evolved and for decades together are that merely because the Government is a litigant, the Court should not take a sympathetic view and if the delay is gross, unexplained and can be safely termed as laches, then, the writ petition can be dismissed on that ground alone.

7) It has been clarified that neither section 5 of the Limitation Act or the rigors of statute of limitation or the principles evolved and referred above can be relaxed merely because the litigant or the petitioner is Government. The Government enjoys no privilege and when it repeatedly blames the system for not deciding cases on time. Just like any other litigant, the Government also floods the courts with unnecessary and frivolous litigations and when it seeks to espouse a alleged genuine cause and after enormous delay, the explanations are stereo typed, mechanical or casual.

8) We are constrained to observe as above, simply because page 35 would reveal as to how after the Tribunal's order was duly communicated and copy received on 13th February, 2009, the department did nothing till 14th May, 2009 except to send a letter to the Government seeking its approval through the Finance Department for filing a writ petition.

9) Thereafter, the Finance Department and some officials therein sat over the files and till 10th July, 2009. On 10th July, 2009, the reply was received from the Government, after which, on 16th July, 2009, a request was sent to the Government Pleader of the Bombay High Court Original Side for drafting the writ petition. Thereafter, a draft of the writ petition was received on 17th August, 2009 and it is stated that the draft went through several officials and supposedly for their approval. Then, it was realised, not until 19th November, 2010, that the files have been despatched to a wrong Government Pleader's office in the High Court and they ought to have been sent to the Government Pleader, Appellate Side and not Original Side. Thereafter, the matter was again pending with the Finance Department and it is admitted that from 14th May, 2009 till 26th December, 2011, not even a draft of the writ petition was ready and to be filed in this Court. The draft was approved only on 9th February, 2012/13th February, 2012.

10) We do not find the above explanation to be reasonable at all. If for one and a half years and more the files are lying in Government Pleader's office, then, we do not know why there was no promptness or expediency exhibited in meeting the concerned Government advocates, getting the draft prepared and duly filed.

If this is how the Government revenue is sought to be protected, then, we say nothing more. We cannot put a premium on utter negligence, complete callousness and carelessness on the part of the Government officials. They cannot expect discretionary and equitable relief from the court under Article 226 of the Constitution of India when the explanation that they furnish is wholly unacceptable. It is time that Government realises that it is not a special litigant. If its officials, including the advocates appointed, are not working, it must proceed against them and take action. It cannot just request the court to condone the lapses and inefficiency or equally dishonesty and corruption. If the court of law is expected to render justice expeditiously, then, it should not be burdened with cases which have been brought belatedly and without any satisfactory and reasonable explanation for the delay. That these are Government matters and the court cannot condone the delay in movement of files, some inaction and negligence on the part of the Government officials, merely because larger public interest is at stake. We are, therefore, of the opinion that in this case, the explanation for the delay in para 10, with the assistance of Annexure 'G' does not inspire confidence. It does not demonstrate that the Government or the Department concerned was vigilant, serious and attentive and did its best to protect the public revenue.

11) For the reasons indicated above, the writ petition is dismissed on the ground of delay and laches.

(A.A.SAYED, J.)

(S.C.DHARMADHIKARI, J.)