

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.270/2016
IN
REVISION PETITION (ST) NO.32316/2016
IN
CIVIL APPLICATION NO.197/2016
IN
CIVIL REVISION APPLICATION NO.27/2016

Mrs. Noorjahan Burhan Ahmed ... Petitioner /
Applicant/Ori. Defendant No.1.
Vs.

Mohammed Zubair A. S. Merchant
& Ors. ... Respondents/Ori. Plaintiff

Mr. M. L. Palan i/b. V. K. Gupta for the applicant
Mr. Owen Menezes i/b. Sean Wassooodeo for the respondent No.1.

CORAM : K. K. TATED, J.
DATE : DECEMBER 22, 2016

PC.:

1. Heard. This application is made by the original defendant No.1 for condonation of delay of 183 days in filing the review petition to review the order dated 25.04.2016 passed by this court in Civil Application No.197/2016 in Civil Revision Application No.27/2016 directing the applicant to deposit sum of Rs.30,000/- pm by way of interim compensation in respect of the suit premises from August 2009 till final disposal of the Civil Revision Application.

2. The learned counsel for the applicant submits that being aggrieved by the order dated 25.04.2016 passed by this court in Civil Application No.197/2016 they had preferred SLP (Civil) No.23588/2016 before the Apex Court. He submits that the Apex Court dismissed their SLP by order dated 26.08.2016 and extended time to deposit the arrears for three months. He submits that because of dismissal of the SLP, the applicant gone into depression and occurred ill health and because of that it remained on their part to file the present review petition in time. In support of this contention, he relies on paragraph 11 of the Civil Application which reads thus:

“11. That petitioner states that the petitioner filed SLP and dismissed on 26.08.2016 and Supreme Court granted three months time to pay compensation. As the petitioner stated in above para reason for delay and ill health stated about the cause of delay. That there is a delay in filing the review petition which ought to have been filed on or before 183 days. The delay occurred due to the petitioner / applicant approached Hon'ble Supreme Court by filing SLP bearing NO.23588/2016 and the said SLP was heard and decided on 26.04.2016 and also after deciding the said SLP, a huge amount of compensation directed by the Hon'ble Court to deposit in court. The petitioner gone into depression and occurred ill health due to mental tension and facing various elements and complications in body, due to which, he could not contacted his previous Advocate and appointed new Advocate for seeking present relief in the review petition. As such, there is a delay in filing the review petition. The petitioner shall crave leave to refer and rely upon the medical papers as and when produced. The petitioner submits that the delay of 183 days in filing the present petition, which is neither deliberate not intentional and this Hon'ble Court be pleased to condone the same in the interest of justice, equity and fare play and take present review petition on record and decide and dispose of the same as per law.”

3. The learned counsel for the applicant submits that the Apex Court dismissed their SLP summarily and hence, there is no bar in filing the review petition before this court. In support of this contention he relies on the judgment of the Apex Court in the matter of ***Gangadhara Palo Vs. Revenue Divisional Officer and Anr. AIR 2011 SC (Civil) 965***. He relies on paragraph 9, 10, 14, 15 and 16 which reads thus:

“9. The situation is totally different where a special leave petition is dismissed without giving any reasons whatsoever. It is well settled that special leave under Article 136 of the Constitution of India is a discretionary remedy, and hence a special leave petition can be dismissed for a variety of reasons and not necessarily on merits. We cannot say what was in the mind of the Court while dismissing the special leave petition without giving any reasons. Hence, when a special leave petition is dismissed without giving any reasons, there is no merger of the judgment of the High Court with the order of this Court. Hence, the judgment of the High Court can be reviewed since it continues to exist, though the scope of the review petition is limited to errors apparent on the face of the record. If, on the other hand, a special leave petition is dismissed with reasons, however meagre (it can be even of just one sentence), there is a merger of the judgment of the High Court in the order of the Supreme Court. (See the decisions of this Court in the cases of Kunhay Ammed and Ors v. State of Kerala and Anr. (2000) 6 SCC 359; S. Shanmugavel Nadar v. State of Tamil Nadu and Anr. JT 2002 (7) SC 568; State of Manipur v. Thingujam Brojen Meetei AIR 1996 SC 2124; and U.P State Road Transport Corporation v. Omaditya Verma and Ors. AIR 2005 SC 2250).

10. A judgment which continues to exist can obviously be reviewed, though of course the scope of the review is limited to errors apparent on the face of the record but it cannot be said that the review petition is not maintainable at all.

14. A precedent is a decision which lays down some principle of law. In our view, the observations made in para 4 of the aforesaid judgment, quoted above, that "if a review petition is filed after the dismissal of the special leave petition, it would be treated as an

affront to the order of the Supreme Court" is not a precedent at all. A mere stray observation of this Court, in our opinion, would not amount to a precedent. The above observation of this Court is, in our opinion, a mere stray observation and hence not a precedent.

15. By a judicial order, the power of review cannot be taken away as that has been conferred by the statute or the Constitution. This Court by judicial orders cannot amend the statute or the Constitution.

16. For the reasons given above, we allow this appeal, set aside the impugned order of the High Court, condone the delay in filing the review petition before the High Court and remand the matter to the High Court to decide the review petition on merits in accordance with law expeditiously after hearing the parties concerned.

4. The learned counsel for the applicant submits that it is crystal clear from the Apex Court judgment in the matter of **Gangadhara Palo (supra)** if an SLP is dismissed summarily, review petition is maintainable before the High Court. He submits that in the interest of justice, this Hon'ble Court be pleased to condone the delay in preferring the review petition. He submits that the applicant has good chance of success in the present proceedings. 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 vehemently opposed the Civil Application. He submits that the applicant has not shown sufficient cause for for condonation of delay. He submits that the Apex Court, vide its reasoned order dated 26.08.2016 dismissed the applicant's SLP. Hence, the review petition is not maintainable. In support of this contention, he relies on the judgment of this court in **Nivruti G. Ahire Vs. State of Maharashtra &**

Ors. 2007(5) MLJ 284. He further submits that though the Apex Court granted three months' time to the applicant to clear the arrears of rent, he failed and neglected to do so. Hence, there is no substance in the Civil Application. Same be dismissed with costs.

6. It is to be noted that the Apex Court dismissed the SLP preferred by the applicant, summarily by order dated 21.08.2016. Hence, the review petition filed by the petitioner is maintainable, considering the ration laid down by the Apex Court in **Gangadhara Palo (supra)** (supra). The reasons given by the applicant for delay is that he was in depression because of the order passed by the Apex Court gone against them in the SLP.

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 reasons disclosed by the applicant in paragraph 11 of the Civil Application and the law laid down by the Apex Court in ***N.Balkrishnan (supra)***, I am satisfied that the applicant has made out a case for allowing the Civil Application.

9. At the same time, the applicant has to pay cost of Rs.5000/- to the respondent within four weeks from today. At this stage, the learned counsel for the respondent submits that the costs may be donated to

the High Court Law Library, Original Side, Mumbai.

10. Hence, following order is passed:

- a. Delay of 183 days in filing the review petition is condoned.
- b. The applicant shall either to pay to the respondent or their Advocate cost of Rs.5000/- or deposit with the High Court Law Library, Original Side, Mumbai within four weeks from today, failing which the Civil Application shall stand dismissed without further reference to the court.
- e. Payment of cost shall be condition precedent.
- f. Civil application stands disposed off accordingly.

JUDGE