

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

CIVIL APPLICATION NO.39/2016
IN
CIVIL REVISION APPLICATION NO.977/2010

Office Notes, Office Memoranda of Coram, Appearances, court's orders or directions and Registrar's orders	Court's or Judge's orders
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Mr. R. D. Naik i/b. Umesh R. Mankapure for the applicant
Mr. Yogesh Dabake, AGP for the Respondent Nos.1 and 2.

CORAM : K. K. TATED, J.
DATE : JUNE 15, 2017

P.C.:

1. Heard. This application is for restoration of the Civil Revision Application which stood dismissed in view of conditional order dated 25.02.2011 passed by the learned learned Registrar (Judicial-I) for non removal of office objections.

2. The learned counsel for the applicant submits that inadvertently, it remained on the part of the Advocate for the applicant to take appropriate steps. In support of this contention, he relies on paragraph 4 of the Civil Application, which reads thus:

“4. The applicants state that the learned Judicial Registrar passed an order dated 25.02.2011 and same is came to know in the month of March, 2011. Thereafter Advocate for the applicant has prepared the present civil application for condonation of delay and tried to contact the applicants, however, the Advocate could not contact the applicants. The Advocate for the applicant has sent a letter to the applicant and informed to him about dismissal of the matter. The applicants have contacted them in the month of May 2011 where the vacations of this Hon'ble Court is going on. Thereafter Advocate for the applicants have send the present civil application in the month of June. The applicants have affirmed and sent back after one month because they are agriculturists and illiterate persons having no legal knowledge.”

3. The learned counsel for the applicant submits that the applicant has good chance of success in the matter. He submits that because of mistake on the part of an Advocate the applicant should not suffer. He submits that in the interest of justice, this Hon'ble Court be pleased to condone the delay in making the Civil Application and restore the matter on record for hearing on merits.

4. On the other hand, the learned AGP vehemently opposed the Civil Application. He submits that the applicant has not shown sufficient cause for condonation of inordinate delay of 1 year and 237 days in making the Civil Application.

Hence, there is no substance in the Civil Application. The Civil Application be dismissed with costs.

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 fact that because of mistake

on the part of an Advocate, a litigant should not suffer and the reasons disclosed by the applicant in paragraph 4 of the Civil Application, I am satisfied that the applicant has made out a case for allowing the Civil Application. At the same time, the applicant has to pay cost of Rs.5000/-.

7. Hence, following order is passed:

- a. Delay in making the civil application is condoned.
- b. Order dated 25.02.2011 passed by the learned Registrar (Judicial-I) is set aside.
- c. The Civil Revision Application No.977/2010 is restored to file.
- d. The applicant to remove all office objections in Civil Revision Application No.977/2010 within two weeks from today, failing which the Civil Application shall stand dismissed without further reference to the court.
- e. The applicant to pay cost of Rs.5000/-. The cost shall be paid to Kirtikar Law Library, High Court, Mumbai within two weeks from today and place a receipt thereof on record.

f. Civil application stands disposed off accordingly.

JUDGE