

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

WRIT PETITION NO.12712 OF 2015

Pimpri Chinchwad Municipal Mahanagarpalika .. Petitioner

vs.

Shri Subhash Sadashiv Shingade .. Respondent

Mr.G.H.Keluskar for the petitioner

Mr.Rajaram Devram Pawar for the respondent

CORAM : K. K. TATED, J.
DATE : APRIL 4, 2017

PC.:

- 1 Heard the learned counsel for the parties.
- 2 By consent of both the parties, matter is taken on board for final hearing at the stage of admission.
- 3 By this petition under Article 226 and 227 of the Constitution of India, the Petitioner challenges the order dated 27.4.2015 passed by learned Presiding Officer, Labour Court No.3, Pune in Misc. Application (IDA) No.9 of 2010 rejecting their application for condonation of delay and for setting aside the ex-parte award dated 9.12.2009 passed by III Labour Court at Pune in Reference (IDA) No.102 of 2008.
- 4 The learned counsel for the petitioner submits that the court

below erred in coming to the conclusion that the petitioner failed and neglected to show sufficient cause for condonation of delay in filing application for setting aside the ex-parte award. He submits that though the summons were duly served on the petitioner in reference (IDA) No.102 of 2008, it remained on their part to take appropriate steps for filing written statement. He submits that during that period, there was election of Corporation itself. Because of election duty, maximum officers and employees have to attend the election duty. Before election they have to go for training course and because of that, it remained on their part to file written statement before the Labour Court.

5 The learned counsel for the petitioner further submits that though they engaged advocate to protect their interest, the said advocate failed and neglected to take appropriate steps. Not only that, the said advocate remained absent when the matter was called out for final hearing before the Labour Court on 9.12.2009. He submits that because of mistake on the part of advocate, petitioner should not suffer. He submits that being the Corporation, they have to take approval from several officers to protect their interest. They appointed advocate in time. They had given instruction for filing written statement and for defending the case. But when the matter was heard finally the said advocate remained absent. He further submits that they have good chance of success in the present proceeding. He submits that in the interest of justice, this Hon'ble Court be pleased to set aside the impugned judgment dated 27.4.2015 passed by Labour Court No.3, Pune and allow the application filed by them for condonation of delay and for setting aside the ex-parte judgment dated 9.12.2009.

6 On the other hand, the learned counsel for the respondent vehemently opposed the present Writ Petition. He filed Affidavit-in-Reply dated 30.6.2016. The learned counsel for the respondent submits that there is no merit in the present Writ Petition and same is required to be dismissed with cost.

7 The learned Counsel for the respondent submits that though the petitioner were duly served with summons, they failed and neglected to file their written statement in time. He submits that when summons were served on the petitioner, there was no election of petitioner establishment. He submits that petitioner made incorrect statement on solemn affirmation before the Labour Court as well as this court about election duty of their employees. He further submits that as per Rule 26 of the Industrial Disputes Act Rule 1997, if there is delay of more than 30 days, then they have to show sufficient cause for condonation of delay. He submits that in the present proceedings, petitioners failed and neglected to show sufficient cause.

8 The learned Counsel for the respondent submits that though the petitioner in their application for restoration before the Trial Court stated that they engaged advocate to protect their interest, they failed and neglected to disclose name of the said advocate. Apart from that, petitioner failed to disclose any action taken by them against the said advocate. Hence, there is no substance in the present Writ Petition and same is required to be dismissed.

9 I have heard both the sides.

10 It is to be noted that in the present proceedings, petitioner in

their application for setting aside ex-parte judgment dated 9.12.2009 specifically stated that their officers were present on Election duty. It is to be noted that if there is Election then first they have to give preference to that duty. Apart from that, to protect their interest they engaged their advocate. Because of mistake on the part of advocate litigant should not suffer. In the matter of **State of Haryana vs. Chandra Mani & Ors. JT 1996 (3) SC 371** the Apex Court held that because of mistake on the part of advocate, a litigant should not suffer.

11 Apart from that bare reading of application filed by the petitioner shows that they disclosed sufficient cause for condonation of delay and for setting aside ex-parte award dated 9.12.2009 passed by Labour Court in Ref.(IDA) No.102 of 2008.

12 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."

13 Considering the above mentioned facts and the law declared by the Apex Court, I am of the opinion that petitioner has made out a case for allowing the Writ Petition but at the same time they have to pay cost of Rs.50,000 to the respondent within four weeks from today. Hence, following order is passed:

a) Petition is allowed in terms of prayer clause (b) which reads thus:

“(b) To quash and set aside the Judgment and Order dated 27.4.2015, passed by the Labour Court No.3, Pune passed in Misc. Application (IDA) No.9 of 2010 and Judgment and Order dated 9.12.2009 passed by the Labour Court III Pune in Reference (IDA) No.102 / 2008 and to permit the Petitioner to file its written statement and direct the Lower Court to hear the Reference according to law.”

b) Petitioner either to pay or deposit in the Registry of this court a sum of Rs.50,000/- by way of cost within four weeks from today, failing which Writ Petition shall stand dismissed without referring back to the court.

c) If cost is deposited within stipulated time as stated hereinabove, respondent is entitled to withdraw the same without furnishing any security.

d) If cost is paid directly to the respondent, in that case, petitioner to file documentary proof to that effect in the Registry within time.

e) Petitioner is permitted to file their written statement if any on or before 30.6.2017 with copy to the respondent

f) Labour Court at Pune is directed to hear Reference (IDA) No.102 of 2008 on its own merits after giving opportunity to both the sides.

g) Hearing of Reference (IDA) No.102 of 2008 is expedited.

- h) Labour Court, Pune to decide Reference (IDA) No.102 of 2008 on or before 30.11.2017.
- i) Writ Petition stands disposed of accordingly.

JUDGE