

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CIVIL REVISION APPLICATION NO. 93 OF 2017

Chintaman s/o Yallappa Yelulkar
Died, per his legal representatives

- 1-A Darshan s/o Chintaman Yelulkar
age 36 years, occ. nil
- 1-B Darshana d/o Chintaman Yelulkar
age 40 years, occ. household
- 1-C Subhadra wd/o Chintaman Yelulkar
age 65 years, occ. household

All above residing at Flat No. 10
Rana Apartments, Near Shantipura
Cantonment Area,
Behind Little Flower School,
Aurangabad.

Applicants

Versus

Aruna w/o Badrinarayan Saboo
age 65 years, occ. household
Residing at Plot No. 141-144
Cantonment Area, Nehru Chowk
Aurangabad.

Respondents

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Respondents

Mr. Hemant Surve, advocate for appellants.
Mr. Umesh Bhadgaonkar, advocate for respondent.

CORAM : M.S. SONAK, J.
DATE : 25th JANUARY, 2018

ORAL JUDGMENT :

1. Heard Mr. Surve, learned counsel for applicants and Mr. Bhadgaonkar, learned counsel for respondents in both the Civil Revision Applications.
2. Rule.
3. At the request of learned counsel for both the parties, rule is made returnable forthwith.
4. By the impugned judgment and order dated 27.09.2016, the Appeal Court has declined to condone delay of 291 days in

instituting appeals against the decree of eviction and recovery of arrears made against the applicants.

5. Mr. Surve, learned counsel for applicants submits that the applicants had entrusted case papers for filing appeals to Adv. Mr. B.S. Deshpande. He points out that even professional fees for such purpose were paid to said advocate. He points out that the advocate proceeded to foreign country without lodging appeals. The said advocate, as, since, quit the practice. It is only when the bailiff alongwith police came to execute the decree, applicants realised that no appeals have been filed or any interim relief has been obtained. Soon thereafter, the applicants engaged another advocate and had filed the appeals. Mr. Surve submits that the delay in this case has been sufficiently explained and there are no malafides involved on the part of the applicants.

6. Mr. Bhadgaonkar, learned counsel for respondents submits that there is ample material on record which indicates that the applicants were aware of decrees soon after the same were made. He submits that despite such knowledge, the applicants were not at all diligent in instituting appeals and, therefore, the Appeal Court, has rightly exercised discretion and rejected the applications seeking condonation of delay. He submits that there is absolutely no jurisdictional error in the impugned orders and, therefore, these Civil Revision Applications may be dismissed with costs.

7. Upon evaluation of rival contentions, as well as the facts and circumstances of the present case borne out from the record, this

is a fit case for condonation of delay though, by imposition of costs upon applicants.

8. The applicants never contended that they were unaware of the decrees made against them. Their specific case is that they handed the case papers and professional fees to Adv. Mr. B.S. Deshpande, instructing him to prepare and file the appeals. It is their case that they were under the bonafide impression that such appeals would be preferred either within prescribed period of limitation or within some reasonable period. They relied entirely upon Adv. Mr. Deshpande to do the needful in the matter. There is no dispute about Adv. Mr. Deshpande leaving for abroad without filing two appeals. Delay in this case is also not really inordinate and, in any case, explained properly. In such circumstances, the Appeal Court, was required to exercise discretion in a positive manner.

9. In *N. Balkrishnan vs. M. Krishnamurthy*, 1998(7) SCC 123, the Hon'ble Supreme Court in paragraphs 8 to 14 has observed as follows :

8. The appellant's conduct does not on the whole warrant to castigate him as an irresponsible litigant. What he did in defending the suit was not very much far from what a litigant would broadly do. Of course, it may be said that he should have been more vigilant by visiting his advocate at short intervals to check up the progress of the litigation. But during these days when everybody is fully occupied with his own avocation of life an omission to adopt such extra vigilance need not be used as a ground to depict him as a litigant not aware of

his responsibilities, and to visit him with drastic consequences.

9. It is axiomatic that condonation of delay is a matter of discretion of the court. Section 5 of the Limitation Act does not say that such discretion can be exercised only if the delay is within a certain limit. Length of delay is no matter, acceptability of the explanation is the only criterion. Sometimes delay of the shortest range may be uncondonable due to a want of acceptable explanation whereas in certain other cases, delay of a very long range can be condoned as the explanation thereof is satisfactory. Once the court accepts the explanation as sufficient, it is the result of positive exercise of discretion and normally the superior court should not disturb such finding, much less in revisional jurisdiction, unless the exercise of discretion was on wholly untenable grounds or arbitrary or perverse. But it is a different matter when the first court refuses to condone the delay. In such cases, the superior court would be free to consider the cause shown for the delay afresh and it is open to such superior court to come to its own finding even untrammelled by the conclusion of the lower court.

10. The reason for such a different stance is thus :

The primary function of a court is to adjudicate the dispute between the parties and to advance substantial justice. The time-limit fixed for approaching the court in different situations is not because on the expiry of such time a bad cause would transform into a good cause.

11. Rules of limitation are not meant to destroy the rights 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. The law of limitation fixes a lifespan for such legal remedy for the redress of the legal injury so suffered. Time is precious and wasted time would never revisit. During the efflux of time, newer causes would sprout up necessitating newer persons to seek legal remedy by approaching the courts. So a lifespan must be fixed for each remedy. Unending period for launching the remedy may lead to unending uncertainty and consequential anarchy. The law of limitation is thus founded on public policy. It is enshrined in the maxim *interest reipublicae ut 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 rights 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 *Shankuntala Devi Jain v. Kuntal kumari* and *State of W.B. v. Administrator, Howrah Municipality*.

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 of the explanation. While condoning the delay, the court should not forget the opposite party altogether. It must be borne in ind that he is a loser and he too would have incurred quite large litigation expenses. It would be a salutary guideline that when courts condone the delay due to laches on th part of the applicant, the court shall compensate the opposite party for his loss.

14. In this case, explanation for the delay set up by the appellant was found satisfactory to the trial court in the exercise of its discretion and the High Court went wrong in upsetting the finding, more so when the High Court was exercising revisional jurisdiction. Nonetheless, the respondent must be compensated particularly because the appellant has secured a sum of Rs. fifty thousand from the delinquent-advocate through the Consumer Disputes Redressal Forum. We, therefore, allow these appeals and set aside the impugned order by resorting the order passed by the trial court but on a condition that the appellant shall pay a sum of rupees ten thousand to the respondent (or deposit it in this Court) within one month from this date.

10. In paragraph no. 9 of N. Balkrishna (supra) the Hon'ble Supreme Court has observed that once the Court accepts the explanation as sufficient, it is the result of the positive exercise of discretion and normally, the superior Court should not disturb such finding unless the exercise of discretion was on only untenable ground or arbitrary or perverse. But it is different when the first court refuses to condone the delay. In such cases, the superior court would be free to consider the cause shown for the delay afresh and it is upon the superior court to give its own

findings even untrammelled by the conclusion of the lower court. Therefore, upon examining the cause shown, since, this Court is of the opinion that the same was sufficient, the delay deserves to be condoned.

11. In paragraph no. 13 of N. Balkrishna (supra), the Hon'ble Supreme Court has held that while condoning the delay, the court should not forget the opposite party altogether. It must be borne in mind that he is a loser and he would have incurred a large litigation expenditure. It would be a salutary guideline that when courts condone delay due to laches on the part of the applicant, the court shall compensate the opposite party for his loss.

12. Applying the aforesaid principles to the facts and circumstances of the present case, these Revision Applications are allowed.

13. Applications for condonation of delay in instituting appeals are hereby allowed subject to applicants paying cost of Rs. 5,000/- in each of the revision applications to the respondents. Such cost to be paid/deposited before the Appeal Court within a period of four weeks from today. When such costs are indeed deposited within a period of four weeks from today, delay in institution of the two appeals shall be deemed to have been condoned. However, in case of failure to deposit the cost, these revision applications shall be deemed to have been dismissed without any further reference to this Court. If costs are deposited, the respondents shall be at liberty to withdraw the same, unconditionally.

14. Civil Revision Applications are, therefore, allowed with costs in the aforesaid terms. Rule made absolute.

15. All concerned to act on the basis of authenticated copy of this order.

(M.S. SONAK, J.)

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