

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO.527 OF 2018

Rabiya Abdulkarim Shaikh-Sanglilkar ...Applicant
vs.
Ershad Ajij Pathan ...Respondent

Mr. Wasim Samlewale I/b. T.S. Ingale, for the Applicant.
None for the Respondent.

CORAM : M. S. SONAK, J.

DATE : NOVEMBER 30, 2018

P.C.:

. Heard Mr. Wasim Samlewale, learned counsel for the Applicant.

2. The challenge in this Petition is to the order dated 5th July, 2018 by which the Appeal Court has condoned the delay in institution of the Appeal.

3. Mr. Wasim points out that no sufficient cause was shown for the delay of almost one year five months and five days. He submits that material on record clearly indicates that the Respondents were aware of the eviction proceeding instituted against them and despite service of summons, they failed to

appear. He submits that *ex parte* decree was passed which was also to the knowledge of the Respondents. He submits that the ground that there was settlement talks between the parties, is false and not substantiated. In the absence of any sufficient cause being shown, the Appeal Court clearly exceeded the jurisdiction in condoning the inordinate delay. For all these reasons, he submits that the impugned order is required to be set aside.

4. On perusing the application for condonation of delay, the reply filed thereto and the impugned order, it cannot be said that the discretion has been exercised unreasonably in accepting the cause shown by the Respondents and condoning the delay in the institution of the Appeal.

5. The learned counsel for the Respondents have pleaded that they were not at all aware of the *ex parte* decree and they were even continuing to pay rent which was being accepted by the landlords. There are further pleadings that only when the *ex parte* decree was sought to be, they rushed to the Court to make inquiries and get only about *ex parte* decree. They have also pleaded that there were some settlement talks between the parties

and it was held out to the Respondents that the suit was being withdrawn.

6. Even if we ignore the aspect relating to settlement talks, it does appear that the Respondents rushed to the Court, no sooner execution was levied against them. If the learned Appeal Court has found that the explanation furnished by the Respondents to be reasonable and sufficient, then in the absence of any perversity or unreasonableness, the exercise of discretion in such matters, need not be interfered with.

7. The Hon'ble Apex Court in the case of ***M. Balkrishnan vs. M. Krishnamurthy 1998 (7) SCC 123*** has held that in matters of condonation of delay, it must be remembered that in every case of delay there can be some lapse on the part of the litigant concerned and 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. Further, if the discretion has been positively exercised and the delay has been condoned in the absence of any unreasonableness or perversity, such exercise

of discretion should ordinarily not being interfered with.

8. In the impugned order, the Appeal Court has not only imposed cost but also expedited the Appeal. All this includes that discretion has been exercised in the reasonable manner and consequently there is no reason to interfere with impugned order.

9. Accordingly, this Petition is dismissed.

10. There shall be no order as to the costs.

(M. S. SONAK, J.)