

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

CIVIL APPLICATION NO.924 OF 2016

IN

FIRST APPEAL (ST) NO.5200 OF 2016

Yuvraj Dattatray Wasawand and Anr. .. Applicant

V/s.

Aesseal India Pvt.Ltd. And Ors. .. Respondents

Mr.Chaitanya Nikte for the applicant

Mr.Nitesh Jain with Ms.Juhi Mathur i/b M/s.Shardul Amarchand Mangaldas and Co. for the respondent no.1

**CORAM: K.K. TATED &
B. P. COLABAWALLA, JJ.**

DATED : JULY 24, 2018

P.C. :

1 Heard.

2 By this Civil Application Applicant original defendant nos.2 and 3 are seeking condonation of 112 days delay in filing the First Appeal challenging the judgment and decree dated 31.07.2015 passed by Civil Judge, Senior Division, Pune in Special Civil Suit No. No.1839 of 2011.

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3 In the present proceeding, Respondent no.1 original plaintiff filed their Affidavit-in-Reply to oppose the present Civil Application.

4 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."*

5 Considering the submissions made by the learned counsel for the Applicant, the averments made in the Application and the law laid down by the Apex Court in the matter of **N.Balkrishnan Vs. M. Krishnamurthy (1998) 7 SCC 123**, we are of the opinion that Applicant has made out a case for allowing the Civil Application but at the same time they have to pay cost of Rs.50,000/- to the Respondent no.1 original plaintiff. To that effect advocate for the Applicant has given in writing that they are ready and willing to pay cost. Same is taken on record and marked 'X' for identification. Hence, following order is passed:

A) Civil Application is allowed in terms of prayer clause (a) which reads thus:

“a) That this Hon'ble Court be pleased to condone the delay of 112 days in filing the appeal.”

B) Cost of Rs.50,000/- to be paid to Respondent no.1 original plaintiff within three weeks from today and place on record proof to that effect, failing which the Writ Petition shall stand dismissed without further reference to the court.

C) Civil application stands disposed off accordingly.

(B. P. COLABAWALLA, J.)

(K.K. TATED, J.)