

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

**CIVIL APPLICATION NO.3842 OF 2017
IN
FIRST APPEAL (ST) NO.23228 OF 2017
WITH
FIRST APPEAL (ST). NO.23228 OF 2017**

Hill Properties Limited .. Applicant

vs.

Metaoxide Private Limited .. Respondent

Mr. Ashish Kamat with Ms.Megha Chandra with Ms.Yasmin Godrej i/b
M/s.Crawford Bayley and Co. for the applicant

Ms.Nikita Bangera i/b Mr.Y.A.Legal for the respondent no.1

**CORAM : K. K. TATED &
SARANG V. KOTWAL, JJ.
DATE : JANUARY 8, 2018**

PC.:

1. Heard the learned counsel for the parties.
2. Advocate for the applicant submits that Respondent nos.2 to 4 are formal parties. They also preferred Appeal. Those Appeals are already admitted by this court.
3. The learned counsel for the Applicant submits that there is a delay in preferring First Appeal challenging the decree dated 18.8.2016

passed by Bombay City Civil Court, Mumbai in City Civil Suit No.8043 of 1994 (High Court Suit No.352 of 1994). He submits that for taking decision on behalf of company, they have to consult several officers. In support of this contention, the learned counsel for the Applicant relies on paragraph 2 of the Civil Application. He submits that in the interest of Justice, this Hon'ble Court be please to condone the delay. He submits that Applicant has good chance of success in the present matter.

4. On the other hand, the learned counsel for the Respondent no.1 vehemently opposed the present Civil Application. She submits that there is inordinate delay of 329 days in filing the First Appeal. She submits that Applicant has not shown sufficient cause for condonation of delay. Hence, there is no question of allowing the present Civil Application.

5. Heard both the sides.

6. 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 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 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."

7. Considering the submissions made by the learned counsel for the Applicant, the reason disclosed in paragraph 2 of the Civil Application

and the law declared by the Apex Court in the matter of *N.Balkrishnan Vs. M. Krishnamurthy*, we are of the opinion that Applicant has made out a case for allowing the present Civil Application. But at the same time, Applicant has to pay cost of Rs.500/- to the Respondent or their advocate within 3 weeks from today. Hence, following order is passed:

- a) Delay in filing First Appeal is condoned.
- b) Applicant to pay cost of Rs.500/- to the Respondent no.1 or their advocate within 3 weeks from today and file Receipt to that effect in the Registry failing which the Civil Application shall stand dismissed without further reference to the court.
- c) Civil application stands disposed off accordingly.
- d) First Appeal to be placed on board for admission on 22.1.2018.

(SARANG V. KOTWAL)

(K.K.TATED, J.)