

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

WRIT PETITION NO.14232 OF 2016

Pandurang Rama Patil and Anr. .. Petitioner

V/s.

The Managing Director MIDC and Anr. .. Respondents

Mr.Vijay R. Garad for the petitioner

Mr.Pranav Thakur I/b M/s.Little and Co. for the respondent no.1

Mr.Rohit P. Sakhadeo for the respondent no.2

CORAM: K.K. TATED, J

DATED : NOVEMBER 29, 2018

P.C. :

1 Heard.

2 By consent, matter is taken on board for final hearing at the stage of admission itself.

3 By this petition under Article 227 of the Constitution of India the Petitioner challenges the order dated 22.7.2016 passed by 3rd Joint Civil Judge, Junior Division, Vashi, Navi Mumbai in Misc.Application No.151 of 2015 rejecting Petitioner's Application for condonation of delay in filing Application for restoration of Regular Civil Suit No. 159 of 2001 (Old Regular Civil Suit No. 218 of 1992) which stand dismissed for non-

prosecution by order dated 30.12.2013.

4 The learned counsel for the Petitioner submits that both the Petitioners are Senior Citizens. He submits that Petitioner no.1 is about 73 years old and Petitioner no.2 is 69 years old. He submits that both the Petitioners are not keeping well. Because of ill-health no one remained present on behalf of Petitioner before the Trial Court when the matters were called out. He further submits that actually the matters were transferred from one court to another court. Though they have appointed advocate in Trial Court, their advocate remains absent and hence, Suit stands dismissed for want of prosecution. He submits that because of mistake on the part of advocate, litigant should not suffer. He submits that they have good chance of success in the present proceedings. He submits that in the interest of justice this Hon'ble Court be pleased to set aside the order dated 22.7.2016 passed by Trial Court in Misc. Application No.151 of 2015 and allow their Application for condonation of delay. He submits that Petitioners are ready and willing to pay cost of Rs.7,500/- to each Respondent i.e. Respondent no.1, The Managing Director, Maharashtra Industrial Development Corporation and Respondent no.2, The City Engineer CIDCO or their advocates.

5 Both the counsel for Respondent nos.1 and 2 vehemently opposed the present Writ Petition. They submit that Petitioner failed and neglected to show sufficient cause for condonation of 425 days delay in filing Application for restoration of Regular

Civil Suit No. 159 of 2001. He submits that Trial Court specifically recorded in the impugned order that though Petitioner relied on Death Certificate, they failed and neglected to place on record the original one. Therefore, there is no question of allowing the present Writ Petition.

6 Heard both the sides at length.

7 It is to be noted that admittedly in the present proceedings, both the Petitioners are Senior Citizens. They appointed their advocate in Trial Court to protect their interest in Regular Civil Suit No. 159 of 2001. When the matter was called out, no one appeared on behalf of them. Because of mistake on the part of advocate, litigant should not suffer.

8 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."

9 It is to be noted that Trial Court in impugned order in paragraph 5 held that Petitioner failed and neglected to place on record the original certificate issued by Doctor. This shows that Trial Court itself believed the Petitioner's case about ill-health. There is no finding that Trial Court called upon the Petitioner to place on record the original document.

10 Considering the above mentioned facts and the law declared by the Apex court and as Petitioner is ready and willing to pay cost of Rs.7,500/- to each Respondent, I am satisfied that the Petitioner has made out a case for allowing the Writ Petition. Hence, following order is passed:

- a) Order dated 22.7.2016 passed by 3rd Joint Civil Judge, Junior Division, Vashi, Navi Mumbai in Misc.Application No.151 of 2015 is set aside.
- b) Application filed by the Petitioner under section 5 of the Limitation Act for condonation of delay being Misc.Application No.151 of 2015 is allowed.
- c) Trial Court is directed to hear Petitioner's Application for restoration of suit on its own merits.
- d) Petitioner to pay cost of Rs.7,500/- to each Respondent i.e. Respondent no.1, The Managing Director, Maharashtra Industrial Development Corporation and Respondent no.2, The City Engineer CIDCO or their advocates on or before 11.01.2019 and place on record receipt to that effect, failing which the Writ

Petition shall stand dismissed without further reference to the court.

e) Writ Petition stands disposed of accordingly.

(K.K. TATED, J.)