

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

WRIT PETITION NO.12866 OF 2018

Navi Mumbai Municipal Corporation .. Petitioner

V/s.

Dattu Dharma Patil and Ors. .. Respondents

Mr.Sandesh Deshpande for the petitioner

CORAM: K.K. TATED, J.

DATED : NOVEMBER 26, 2018

P.C. :

1 Heard the learned counsel for the Petitioner

2 By this petition under Article 227 of the Constitution of India the Petitioner challenges the order dated 18.06.2018 passed by Adhoc District Judge-4 & Additional Sessions Judge, Thane below Exhibit-1 in Civil Misc. Application No.89 of 2016 condoning the delay of 117 days in filing the appeal challenging the judgment and decree dated 5.9.2015 in Regular Civil Suit No. 5 of 2009.

3 The learned counsel for the Petitioner submits that in the present proceedings, Respondent original plaintiff filed Regular Civil Suit No. 5 of 2009 in the court of 6th Joint Civil Judge, Senior Division, Thane for declaration and permanent injunction

in respect of the suit property i.e. Survey No.135/1, 135/2, 135/3 which were converted into plot no.196 admeasuring 6300.25 sq.mtrs. situated in Jugaon, Vashi, Navi Mumbai. He submits that the said suit was dismissed on merit on 5.9.2015. He submits that thereafter the Respondent original plaintiff preferred appeal. That was barred by limitation. Hence, original plaintiff preferred Application for condonation of 117 days delay in filing the same.

4 The learned counsel for the Petitioner submits that the court below allowed the Respondent original plaintiff's Application for condonation of delay only on the ground that both of them were Senior Citizens and not keeping well. He submits that the courts below failed to consider the fact that even Regular Civil Suit No. 5 of 2009 was filed by the original plaintiffs through the power of attorney holder Shri Prabhakar Harishchandra Patil. Therefore, there is no question of taking into consideration the age and illness of the plaintiff at the time of deciding their Application for condonation of delay. Therefore, present Writ Petition be allowed.

5 It is to be noted that in the present proceedings, cause title of the Regular Civil Suit No. No.5 of 2009 shows that original plaintiff no.1 Dattu Dharma Patil is 82 years old and plaintiff no.2 Harishchandra Dharma Patil is 80 years old.

6 Considering the plaintiffs' age and the reason given by the appellate court for allowing their Application for condonation of

delay, I do not find any reason to entertain the present Writ Petition.

7 Apart from 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."

8 Hence, Writ Petition stands rejected.

9 No order as to costs.

(K.K. TATED, J.)