

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.291/2017
IN
FAMILY COURT APPEAL (ST) NO.25518/2017

Mrs. Rachana Vijay Shah ... Applicant

V/s.

Mr. Vijay Mulchandji Shah ... Respondent

None for the Applicant

Mr. Milan A. Hebballi for Respondent No.1.

**CORAM: K.K. TATED &
N. J. JAMADAR, JJ.**

DATED : NOVEMBER 22, 2018

P.C. :

1 None for the Applicant. Heard the learned counsel for the Respondent.

2 By this Application, the Applicant is seeking condonation of delay of 204 days in preferring the Family Court Appeal challenging the judgment and decree dated 24.08.2016 passed by the Family Court, Mumbai in Petition No.A-1899/2011.

3 The learned counsel for the Respondent husband has vehemently opposed the Civil Application. He has filed a compilation of documents. Same is taken on record. He submits that the Applicant has raised same issues for delay before the

other Courts. Therefore, there is no question of allowing the Civil Application. Hence, the Civil Application may be dismissed with costs.

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 reasons disclosed in the Civil Application and the law laid down by the Apex Court, we are of the view that the Civil Application deserves to be allowed.

6 Hence, the following order is passed:

- a. Delay in preferring the Family Court Appeal is condoned.
- b. Civil application stands disposed off accordingly.
- c. No order as to costs.

(N. J. JAMADAR, J.)

(K. K. TATED, J.)