

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

WRIT PETITION NO.11346 OF 2012

Aankush Vithoba Sarade .. Petitioner

vs.

Aaba Pandharinath Kare and Others .. Respondents

None for the petitioner and respondents

Later on:

Mr. P.G.Chavan for the Petitioner
None for the respondents

**CORAM : K. K. TATED, J.
DATED : MAY 4, 2018**

PC.:

- 1 None for the Petitioner.
- 2 As no one appeared on behalf of Petitioner, Writ Petition stands dismissed for non-prosecution.
- 3 Later on, in the second session, advocate for the Petitioner mentioned the matter.
- 4 Earlier order is called. Matter is restored on file.
- 5 By this petition under Article 227 of the Constitution of India, the

Petitioner / plaintiff challenges the order dated 13.08.2012 passed by Learned Adhoc District Judge No.2, Solapur below Exhibit-1 in Civil Misc.Application No.280 of 2011 condoning the delay in filing the appeal challenging the judgment and decree dated 24.11.2009 passed by Civil Judge, Junior Division Karmala in Regular Civil Suit No. 238 of 2007.

6 In the present proceedings, Petitioner plaintiff filed Regular Civil Suit No. 238 of 2007 before Civil Judge, Junior Division, Karmala for order of injunction restraining the respondents from disturbing his possession in respect of suit property as described in paragraph 1 of the plaint. In that suit, no one appeared on behalf of the respondents original defendant. Hence, matter proceeded ex-parte. Trial Court passed judgment and decree dated 24.11.2009 restraining respondents from disturbing Petitioner's possession in respect of the suit property. As soon as respondents original defendant learnt about the judgment and decree passed by Trial Court, he filed Application for certified copies and made Application before the appellate court for condonation of delay. Appellate court considering the Application filed by respondents condoned the delay on payment of cost of Rs.2,000/-. Said order is challenged by the Petitioner by this petition under Article 227 of the Constitution of India.

7 The learned counsel for the Petitioner submits that appellate court failed to consider the fact that respondents original defendant failed to show sufficient cause for condonation of more than 9 months delay in filing the Appeal. He further submits that though summons

were duly served on respondents in Regular Civil Suit No. 238 of 2007, they failed and neglected to remain present when the matter was called out for hearing. He further submits that appellate court erred in ignoring the fact that respondents no.1 has not given satisfactory reasons for delay. He was very much aware of the proceeding in Regular Civil Suit No. 238 of 2007 as well as passing of judgment and order dated 24.11.2007 prior to filing of Civil Miscellaneous Application No.280 of 2011. On the basis of these submissions, the learned counsel for the Petitioner submits that impugned order dated 13.8.2012 is required to be set aside.

8 Heard the learned counsel for the Petitioner at length.

9 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."

10 In the present proceedings, as soon as respondents learnt about the judgment and decree passed by Trial Court, he immediately filed Application for certified copy of orders on 3.8.2010. Same was ready for delivery on 20.8.2010. Thereafter he handed over all the papers to his advocate in Solapur city on 30.8.2010. Concerned advocate informed him that they have to file Application for condonation of delay in filing appeal. These facts are stated by the respondents

original defendant in their Application for condonation of delay in paragraph nos. 5 and 6 which reads thus:

“5. That a false complaint is filed by the opponent No.1 against the present applicant under Sec.394, 323 of I.P.C. That as per the complaint, police arrested the applicant. At that time, the applicant enquired with advocate from Karmala about the false case. In the first week of August, 2010, Advocate from Karmala told the applicant that there is criminal case as well as civil suit against the applicant and the said civil suit was decided ex-parte against the applicant on 24.11.2009. Then immediately applicant had applied for obtaining certified copies of judgment and decree of R.C.S.No.238/2007 on 3.8.2010 and copies were ready for delivery on 20.8.2010. After obtaining the copies, the applicant came to Solapur to his advocate on 30.8.2010. That advocate advised the applicant that appeal will have to be filed against the said decree but there is delay in filing appeal, hence the applicant had filed this application for the condonation of delay in filing appeal against judgment and decree passed in Regular Civil Suit No.238/2007.

6) That the delay is caused due to the reasons mentioned above. That applicant was not residing at village Kalashi and applicant residint at village Tandalwadi Taluka Paranda, so he has no knowledge aboutg the summons of the suit. That he has not received summons which is issued by R.P.A.D. So, he has no knowledge about the suit filed by opponent No.1. Therefore, he could not appear in the said suit and hence suit was decided ex-parte. That there is no fault on the part of the applicant to remain present in the said suit. That applicant has no knowledge about the procedure and law in respect of proceeding in the Court. That the delay in not intentional and the applicant has properly explained the delay which is caused in filing the appeal, so, in the interest of justice, the delay should be condoned. That the suit is in respect of the landed property and rights of the plaintiff-defendants. That the original suit is not decided on merit. That the said suit would have been decided after adducing the evidence of both the parties and would have been decided on merit. Therefore, in the interest of

justice, the delay in filing the appeal is to be condoned, hence, applicant had filed this application for condonation of delay in filing appeal.”

11 It is crystal clear from paragraph nos.5 and 6 of the said Application that respondents were unaware of the judgment and decree dated passed by Trial Court. As soon as they learnt they immediately applied for certified copies and filed the appeal before the appellate court.

12 Considering the facts and the reasons given by appellate court in order dated 13.8.2012 I do not find any reason to interfere in the present Writ Petition under Article 227 of the Constitution of India. Hence, Writ Petition stands dismissed. No order as to costs.

(K.K.TATED, J.)