

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

WRIT PETITION NO.14027 OF 2018

House Full International Limited	...	Petitioner
Versus		
Kothari Cars Private Limited	...	Respondent

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Mr. Soura Subha Ghosh a/w Mr. Arjun Savant I/b M/s Hariani & Co. for the Petitioner.

Mr. S.S. Patwardhan a/w Mr. Bhushan Mahadik for the Respondent.

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CORAM : M.S. SONAK, J.

DATE : 22 DECEMBER 2018

Oral Judgment :

. Heard Mr. Ghosh, learned Counsel for the Petitioner Mr. Patwardhan a/w Mr. Mahadik, learned Counsel for the Respondent.

2 Rule.

3 Rule is made returnable on consent and request of learned Counsel for the parties.

4 The challenge in this petition is to an order dated 15 November 2018, by which, the Appeal Court has refused to condone the delay of 80 days in instituting an appeal against the order of payment of arrears of license fees and other charges.

5 Mr. Ghosh, learned Counsel for the Petitioner submits that though

the certified copy of the order impugned before the appeal court was obtained, the same was misplaced in the office. He submits that the Legal manager, who was entrusted with the matter, also resigned. By the time, a certified copy was traced, there was a delay of 80 days. He points out that the evidence was also led in support of the cause shown in the application seeking condonation of delay. Despite this, the appeal court, by impugned order, has refused to condone the delay. Mr. Ghosh submits that, the appeal court has gone into merits of the matter, in the sense, the appeal court, has adverted to the case of the Petitioner on merits and virtually concluded that the Petitioner has no case on merits and therefore, there is no point in condoning the delay. He submits that this is not correct approach when it comes to considering the applications for condonation of delay.

6 Mr. Ghosh submits that in such a matter, a liberal approach was required to be adopted taking into consideration the fact that the right to appeal is a very valuable and substantive right. He submits that no doubt, some prejudice is bound to be occasioned the Respondent, which could have always been compensated by way of costs. On the basis of instructions, Mr. Ghosh stated that the Petitioner is willing to pay the costs as may be directed by this court. He relies on a judgment in the case of **N. Balakrishnan Vs. M. Krishnamurty**¹ in support of his contentions.

7 Mr. Patwardhan, learned Counsel for the Respondent submits that the entire purpose for institution of an appeal as well as seeking condonation of delay in filing the appeal, is to harass the Respondent and

1 (1998) 7 Supreme Court Cases 123

deprive them of their legitimate dues. He submits that, in the present case, there was no dispute whatsoever as to the liability as well as quantum of the license fees and other charges, which the Petitioner was bound to pay to the Respondent. The decree/order, which is sought to be appealed only requires the Respondent to pay the same. He, therefore, submits that the the condonation of delay or entertainment of the appeal, will be an exercise in futility, because there is no ground whatsoever made out by the Petitioner in support of the appeal.

8 Mr. Patwardhan, points out that the evidence on behalf of the Petitioner was demolished in the course of cross examination. He submits that the Petitioner is a large Company having several employees. The decree/order which is sought to be appealed, is not of a small amount, but involves an amount of over Rs.2.5 crores. He, therefore, submits that the Petitioner had displayed casual and lethargic attitude. He submits that such attitude cannot be condoned on the touchstone of a liberal interpretation. For all these reasons, he submits that there is absolutely no error in the impugned order and this petition may be dismissed with costs.

9 Rival contentions fall for determination.

10 In this case, the delay in institution of the appeal was of only 80 days. The explanation furnished was that the certified copies were obtained, but the same were misplaced. It is also stated that the Legal Manager, who was entrusted with the matter, had resigned. The witness, who was examined in support of the application seeking condonation of delay has also deposed to the very cause which was pleaded in the

application seeking condonation of delay.

11 The appeal court has found fault with such deposition, mainly because, the witness failed to give some answers as to who was previous Advocate of the Company from whom the certified copies were received and who was the person who ultimately traced out misplaced certified copies. In my judgment, these could not have been grounds to disbelieve either cause shown or cause which was deposed to, by the witness on behalf of the Petitioner. The cause shown was sufficient and was deposed to by the witness. There was no evidence to the contrary led by the Respondent. The evidence of the Petitioner's witness was also not demolished in course of cross examination.

12 The appeal court also misdirected itself in law by advertng to the merits of the appeal and almost concluding that there would be no point in entertaining the appeal, since, in any case, the Petitioner does not have a good case in the appeal, on merits. At the time of consideration of application for condonation of delay, these were not considerations which the appeal court could have adverted to.

13 There is no doubt that the Petitioner, considering that the decree required them to pay an amount of over Rs.2.5 crores should have been more diligent to see that the appeal is instituted within the prescribed period of limitation. However, this circumstance is also indicator that the Petitioner, really had nothing to gain by instituting an appeal beyond the period of limitation. Thus construed, the cause shown by the Petitioner ought not to have been rejected, particularly taking into consideration the

circumstance, the delay was of only 80 days.

14 There was nothing fanciful in the Petitioner's contention that the certified copies were misplaced. Similarly, the appeal court, does not appear to have considered the impact of the resignation of the Legal Manager, who was entrusted to handle this matter. Upon consideration of such circumstances, it cannot be said that no sufficient cause was shown to condone the delay of 80 days in the institution of an appeal.

15 In **N. Balakrishnan's** case (supra), the Apex Court has held that in such matters, there is bound to be some lapse on the part of the party seeking condonation of delay. However, that by itself, should not be a reason to non-suit such party. As long as there is no material on record to suggest that the delay was deliberate or that with a view to simply protract the proceedings, utmost consideration must be shown to the suitor and the cause shown by him for condonation of delay.

16 The Apex Court has held that if overall conduct of a party does not warrant to castigate as an “irresponsible litigant”, then a liberal approach must be warranted. The Apex Court has also held that the condonation of delay is matter of discretion of the court. The length of delay is no matter, acceptability of the explanation is the only criterion. Once the court accepts the explanation as sufficient, it is the result of positive exercise of discretion and normally the superior court should not disturb such finding, much less in revisional jurisdiction, unless the exercise of discretion was on wholly untenable grounds or arbitrary or perverse. But it is a different matter when the first court refuses to condone the delay. In such cases,

the superior court would be free to consider the cause shown for the delay afresh and it is open to such superior court to come to its own finding even untrammelled by the conclusion of the lower court.

17 The Apex Court also explained the reason for such a different stance in case where the first court has refused to condone the delay. The reasons is that the primary function of a court is to adjudicate the dispute between the parties and to advance substantial justice. The time-limit fixed for approaching the court in different situations is not because on the expiry of such time a bad cause would transform into a good cause. Rules of limitation are not meant to destroy the rights 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. The law of limitation fixes a lifespan for such legal remedy for the redress of the legal injury so suffered. 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. Therefore, the words “sufficient cause” under Section 5 of the Limitation Act should receive a liberal construction so as to advance substantial justice.

18 The Apex Court has also held that while condoning the delay, the court should not forget the opposite party altogether. It must be borne in mind that he too is a loser and he too would have incurred quite 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.

19 Applying the aforesaid principles to the facts of the present case, a case of condonation of delay is made out, no doubt, subject to payment of substantial costs to the Respondent.

20 Learned Counsel for the Petitioner on the basis of instructions from the Petitioner, has made a statement that the Petitioner will pay overall costs upto Rs.3.5 lacs and from out of such, suitable payment can be made over to some charitable organization. The statement is accepted.

21 According to me, costs of Rs.1.5 lacs can be paid to the Respondent in the present case. The balance costs of Rs.2 lacs may be paid to Tata Memorial Hospital at Lower Parel, Mumbai, which mainly treats Cancer Patients free of charge or on payment of nominal charges.

22 Accordingly, for all the aforesaid reasons, **Rule** is made absolute in terms of prayer clause (b) of this petition. This means that the impugned order is set aside, the delay in institution of appeal is condoned, subject to the following :-

(i) The Petitioner to pay costs of Rs.1.5 lacs to the Respondent, latest by 11 January 2019. If there is any difficulty in payment of costs to the Respondent directly, the Petitioner will be at liberty to deposit such costs before the appeal court on or before 11 January 2019 and thereafter the Respondent is at liberty to withdraw the same unconditionally;

(ii) The Petitioner shall, through proper banking channels or by way of account payee cheque or DD pay the amount of Rs.2 lacs to Tata Memorial Hospital, at Lower Parel, Mumbai, again on or before 11 January 2019;

23 The parties to appear before the Appeal Court on 14 January 2019 at 11.00 a.m. and file an authenticated copy of this order. In addition to the same, the Petitioner to file affidavit of compliance as regards payments of costs as aforesaid. Necessary receipt from Tata Memorial Hospital to also be produced on record. It is made clear that if amounts of costs as aforesaid are not paid or before 11 January 2019, then, this petition shall be deemed to have been dismissed without any further reference to this court with costs of Rs.3.5 lacs;

24 Now that appeal is restored to file of the Appeal Court, the ad-interim orders granted by the Appeal Court shall stand revived and it will be open for the appeal court to proceed to decide the issue of interim relief on its own merits and in accordance with law;

25 Rule is disposed of in aforesaid terms;

26 All parties to act on the authenticated copy of this order.

(M.S. SONAK, J.)