

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

**NOTICE OF MOTION NO. 518 OF 2017
IN
REVIEW PETITION (L) NO.52 OF 2017
IN
WRIT PETITION NO.887 OF 2015**

Life Insurance Corporation of India

.. Applicant /
Petitioner

V/s.

VAS Structure and Anr.

.. Respondents

Mr.Omprakash Jha a/w Ms.Amrita Joshi i/b The Law Point for the
applicant / petitioner

Mr.Harsh Behany i/b M/s.Maniar Srivastava Associates for the
respondents

CORAM: K.K. TATED, J.

**DATED : AUGUST 16, 2018
(IN CHAMBER AT 2.45 P.M.)**

P.C. :

- 1 Heard the learned counsel for the parties.
- 2 By this Notice of Motion, petitioner seeks condonation of 171 days delay in filing the Review Petition.
- 3 It is the case of the applicant original petitioner that before filing

any proceeding on behalf of the Corporation, applicant have to take advice from several officers. Not only that, they require approval also.

4 In support of this contention, the learned counsel for the applicant relies on paragraph 2 of the affidavit in support of Notice of Motion. The learned counsel for the applicant submits that in the interest of Justice, this Hon'ble Court be pleased to condone the delay in preferring the Review Petition. He submits that if delay is not condoned, irreparable loss will be caused to them.

5 On the other hand, the learned counsel for the respondents vehemently opposed the present Notice of Motion. He filed affidavit in reply dated 13.08.2018. The learned counsel for the respondents submits that the reason given by the applicant in paragraph 2 of the affidavit in support of Notice of Motion is not sufficient to condone the delay of 171 days in filing the Review Petition. In support of this contention, the learned counsel for the respondents relies on the judgment of the Apex Court in the matters of *Commissioner of Wealth Tax, Bombay vs. Amateur Riders Club, Bombay, 1994 Supp. (2) SCC 60*, *Office of the Chief Post Master General & Ors. vs. Living Media India Ltd. & Anr. in Civil Appeal No.2474-2475 of 2012 dated 24.02.2012*, *Registrar of Companies vs. Rajshree Sugar & Chemicals Ltd. And Others, (2000) 6 SCC 133* and our High Court Judgment in *the matte of State of Maharashtra vs. Vithu Kalya Govari and others, 2008(6) Mh.L.J. 239*. He submits that in all these judgements, Apex court as well as our High Court held that if sufficient cause is not shown, there is no question to condone the delay. He further submits

that in all these matters, law laid down by the Apex Court as well as High Court that if sufficient cause is not shown, there is no question of entertaining the application for condonation of delay. On the basis of these submissions, the learned counsel for the respondent submits that there is no substance in the present Notice of Motion. Hence, same be dismissed with costs.

6 Heard.

7 It is to be noted that in the present proceeding, there is a delay of 171 days in filing the Review Petition. The reason given by the applicant in paragraph 2 of the affidavit in support of Notice of Motion shows that before filing any proceeding on behalf of applicant Corporation i.e. public sector they have to take permission from several departments. Therefore, there was delay on their part to file the Review Petition.

8 It is to be noted that the authorities cited by the Respondent as stated hereinabove are not applicable in the facts and circumstances of the present case. In the matter of ***Commissioner of Wealth Tax, Bombay vs. Amateur Riders Club, Bombay*** (Supra) there was delay of 264 days, in the matter of ***Office of the Chief Post Master General & Ors. vs. Living Media India Ltd. & Anr.***, there was delay of 427 days, in the matter of ***Registrar of Companies vs. Rajshree Sugar & Chemicals Ltd. And Others***, delay was 406 days and in the matter of ***State of Maharashtra vs. Vithu Kalya Govari and others***, delay was 2 years and 45 days. It is to be noted that in the case in hand, delay is

171 days only whereas sufficient cause is also shown by the applicant in paragraph 2 of the affidavit in support of Notice of Motion.

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 Considering the submissions made by both the parties, the law laid down by the case in the matter of ***N.Balkrishnan Vs. M. Krishnamurthy***, and the explanation given by the applicant in paragraph 2 of the affidavit in support of Notice of Motion, I am satisfied that the applicant has made out a case for allowing this Notice of Motion but at the same time, they have to pay cost of Rs.150/- to the Respondent. Hence, following order is passed:

- a) Delay of 171 days in filing the Review Petition is condoned.
- b) Applicant to pay cost of Rs.150/- to the Respondent within four weeks from today.
- c) Notice of Motion stands disposed of accordingly.

(K.K. TATED, J.)