

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO. 1383 OF 2016
IN
FIRST APPEAL (ST) NO. 23445 OF 2015

Reliance General Insurance Co Ltd. .. Applicant
V/s.
Nirmala Pandurang Kadam & Ors. .. Respondents

Ms. Varsha Chavan for the Applicant.
Mr. Vaibhav Gaikwad for the Respondent Nos. 1 & 4.

CORAM: K.K.TATED, J.
DATED : 10/10/2019

P.C.

1 Heard learned Counsel for the parties.

2 Though, the Respondent No.5 is duly served, no one appeared on behalf of him, when the matter called out.

3 By this Civil Application, Applicant Insurance Company is seeking condonation of 302 days delay in filing First Appeal challenging the judgment and award dated 21.07.2014 passed by the MACT, Satara in MACP No. 256 of 2010.

4 The learned Counsel for the Applicant submits that though the judgment and award passed by the Tribunal on 21.07.2014, thereafter by order dated 06.11.2014, the same was corrected as per order below Exh.62. Thereafter, it remained on the part of their Advocate who appeared before the Tribunal to make

application for certified copy immediately. She submits that the concerned Advocate filed application for certified copy on 02.03.2015 and the same was made available on 23.03.2015. She submits that before filing the Appeal on behalf of Insurance Company, they have to take approval from several departments. Hence, there is delay in filing the First Appeal.

5 On the other hand, the learned Counsel for the Respondent Nos. 1 to 4 vehemently opposed the present Civil Application. He filed Affidavit-in-Reply dated 16.07.2019. He submits that Applicant failed to disclose sufficient cause for condonation of inordinate delay of 302 days in filing First Appeal. He further submits that though the Applicant in Civil Application stated that before filing First Appeal, they have to take approval from several departments, they failed to place on record any such type of approval. Apart from that, Applicant failed to disclose the reasons for inordinate days delay in filing First Appeal. Therefore, there is no substance in the Civil Application and same is required to be dismissed with costs.

6 I heard both the sides at length.

7 In the present proceeding, the impugned judgment and award dated 21.07.2014 was passed by the Tribunal and corrected the same by order dated 06.11.2014 below Exhibit 62. Thereafter, it remained on part of Advocate to apply immediately for certified copy. Because of mistake on the part of Advocate, the litigant should not be suffered.

8 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.”

9 Considering the submissions made by the learned Counsel for the Applicant and reasons given by the Applicant in Civil Application and the law laid down by the Apex Court in the matter of *N. Balkrishnan* (supra), I am satisfied that Applicant has made out a case for allowing the Civil Application.

10 Hence, the following order is passed:

- a) Delay in filing First Appeal, is condoned.
- b) Civil Application stands disposed of accordingly.
- c) No order as to costs.

(K.K.TATED, J.)