

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

WRIT PETITION NO. 5333 OF 2016

Mr. Hemandra Kumar Lallubhai Panchal ... Petitioner

V/s.

Mr. Rajesh Babulal Gupta and ors. ... Respondents

Mr. N. P. Bhavsar, for Petitioner.

None for the Respondents.

CORAM : DAMA SESHADRI NAIDU, J.

DATE : 26th SEPTEMBER, 2019.

P.C.:-

The petitioner-tenant filed RAD Suit No. 674 of 1996. On 3rd May 2013, the Trial Court dismissed the suit on merits. As the record reveals, the petitioner secured the certified copy on 16.05.2013 and eventually filed the statutory appeal on 09.04.2014. There was a delay of 309 days.

2. To have that delay condoned, the petitioner filed Application No. 108 of 2014. Through its order dated

11.01.2016, the Appellate Bench of the Small Cause Court at Bandra, Mumbai, dismissed the delay condonation application. It has held that, besides a bald statement about the delay, the petitioner has not brought on record any cogent material to justify the delay. Aggrieved, the petitioner has filed this Writ Petition.

3. Shri N. P. Bhavsar, the learned counsel for the petitioner, has submitted that the petitioner did assign reasons for his inability to file his appeal on time. But the Appellate Bench, according to him, has not considered them in the right perspective. Besides, Shri Bhavsar has also reminded the Court that the courts have always adopted a liberal approach in condoning delays. In other words, he contends that the Appellate Bench has taken a literal approach, which, he stresses, is impermissible.

4. Despite the service of notice, none appears for the respondents.

5. Indeed, condonation of delay is a matter of judicial discretion. The higher courts in their revisional jurisdiction will usually refrain from interfering with those orders of

discretion. For the courts at higher echelons never desire to substitute the views of the courts below with their own merely on the premise that their views are better. Adjudication is not a matter of relative merits of the judicial views or legal philosophy at different levels; it is a matter of illegality, error, perversity, and so on.

6. That said, I may also note that, first, the Courts always prefer to having the matters decided on merits rather than allowing them to perish on the altars of technicalities. Second, the courts always focus on the cause of the delay rather than the length of the delay. Here the delay is 309 days, and the record reveals that the petitioner-tenant prosecuted the suit for about 17 years but could not succeed. All through he had been diligent. We cannot say that the delay of 309 days amounted to the abandonment of the petitioner's right to preferring the statutory appeal.

7. Besides, courts have reckoned the malady of delay may have the cure of costs—in deserving cases, though.

I accordingly set aside the impugned Judgment, dated

11.01.2016, and condone the delay of 309 days in the petitioner's filing the Statutory Appeal. But that condonation is subject to the petitioner's paying Rs.5,000/- as a cost to the respondent- landlord.

[DAMA SESHADRI NAIDU, J.]