

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

**CIVIL APPLICATION NO.2454 OF 2015  
IN  
FIRST APPEAL (ST) NO.6169 OF 2015**

Bheetika Subrato Kumar Sen and Anr. .. Applicant

vs.

Anita Mohankumar and Ors. .. Respondents

Mr.Pravinkumar G. Pillay for the applicant

Mr.Prateik Parija i/b M/s.Prabus Legal for the respondent nos.1,  
2A and 3

**CORAM : K. K. TATED, J  
DATE : JULY 5, 2019**

**P.C.:**

. Heard.

2 Though Respondent is duly served, no one appeared on  
behalf of them when the matter was called out.

3 By this Civil Application, Applicant defendant nos.1A and  
1B is seeking condonation of 129 days delay in filing First Appeal

challenging the judgment and decree dated 20.09.2014 passed by Bombay City Civil Court at Bombay in Suit No.8258 of 1999 ( Suit No.919 of 2019)

4 The learned counsel for the Applicant submits that initially the Respondent original plaintiff filed the said Suit before the High Court on the Original Side. He submits that they filed written statement when the Suit was before the High Court. Thereafter same was transferred to City Civil Court. No notice was received from their advocate. Hence, matter went ex-parte. He submits that as soon as they received letter dated 10.12.2014 from the plaintiff's advocate, they learnt about the decree passed against them. Thereafter, immediately they applied for certified copy of judgment and decree on 14.12.2014. Same was ready for delivery on 15.01.2015 and was collected by them on 20.01.2015. Thereafter, the Applicant contacted their advocates and filed the present First Appeal before this court on 20.02.2015.

5 The learned counsel for the Applicant submits that for want of knowledge about the transfer of matter from High court to City Civil Court, it remained on their part to take appropriate steps before the City Civil Court. Hence, matter went ex-parte. First time they learnt about the ex-parte judgment and decree when they received letter from the plaintiff's advocate. He submits that they have good chance of success in the present matter. He submits that in the interest of Justice, this Hon'ble Court be pleased to condone the delay in filing the First Appeal and matter be heard on its own merits. He submits that if delay is not

condoned, irreparable loss will be caused to the Applicant.

6 On the other hand, the learned counsel for the Respondent original plaintiff vehemently opposed the present Application. He submits that, reason given by the Applicant in paragraph 2 of the Civil Application is not correct. He submits that as per his knowledge, notice was duly served on the Applicant from the office of the City Civil Court. He further submits that original plaintiff through their advocate by their letter dated 10.12.2014 informed the Applicant about the order passed by Trial Court. Not only that, they also provided copy of judgment. In spite of that, Applicant failed and neglected to take immediate steps for filing First Appeal. He submits that First Appeal filed by them original defendant nos.1A and 1B on 20.02.2015. He submits that there is no explanation for this 2 ½ months why Applicant took some time for filing the present First Appeal. Hence, there is no substance in the present Civil Application and same be dismissed with costs.

7 Heard both the sides at length.

8 It is to be noted that when the matter was transferred from High court to City Civil court, neither the Applicant's advocate nor office of the Civil Court informed the Applicant about the matter. They first time learnt about the decree passed by Trial Court against them when they received letter dated 10.12.2014.

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 these facts and as per order passed by this court in the matter of ***N.Balkrishnan Vs. M. Krishnamurthy*** (Supra), I am satisfied that the Applicant has made out a case for allowing the Civil Application but at the same time, they have to pay cost of Rs.15,000/- to the Respondent nos.1 to 3 and or their advocate within four weeks from today, failing which the Civil Application shall stand dismissed without further reference to the court. Hence, following order is passed:

a. Civil Application is allowed.

b. Delay in filing First Appeal is condoned.

c. Applicant to pay cost of Rs.15,000/- to the Respondent nos.1 to 3 and or their advocate within four weeks from today and place on record receipt to that effect, failing which the Civil Application shall stand dismissed without further reference to the court.

d. Civil application stands disposed off accordingly.

e. No order as to costs.

**(K.K.TATED, J.)**