

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION  
WRIT PETITION NO. 5051 OF 2015

Sangita (Sulochana) Kashinath  
Salunke .. Petitioner  
vs.  
Jitendra H. Yadav and anr. .. Respondent

Mr. Dhanraj A. Chimote for the Petitioner

**CORAM : M. S. SONAK, J.**  
**DATE : 02 APRIL 2019.**

**ORAL JUDGMENT :-**

1] Heard Mr. Dhanraj Chimote, learned counsel for the petitioner.

2] On 11<sup>th</sup> August 2016, this Court made the following order.

*“ Heard learned Counsel for the petitioner.*

*2 By this petition under Article 227 of the Constitution of India the Petitioner challenges the order dated 17.01.2015 passed by 2<sup>nd</sup> Joint Civil Judge, Senior Division, Kalyan in Misc. Application No. 199 of 2011 rejecting plaintiff's application for condonation of 196 days delay in filing review petition for reviewing the order dated 10.8.2010 in Misc. Application No. 226 of 2009.*

*3 Considering the submissions made by the learned counsel for the petitioner and impugned order dated 17.01.2015 by which the Trial Court rejected petitioner's application for condonation of 196 days delay, I am satisfied that petitioner has made out case for following order.*

*a) Office is directed to issue notice before admission to the Respondents, returnable after six weeks, stating that, if time permits, the matter would be decided finally at the stage of admission itself.”*

3] In view of aforesaid order, Rule. Rule is made returnable forthwith.

4] Mr. Chimote, learned counsel for the petitioner states that all the respondents have been duly served.

5] The challenge in this petition is to the order dated 17<sup>th</sup> January 2015 by which the learned Trial Judge has rejected the application for condonation of delay of 196 days in instituting a review petition.

6] If the application for condonation of delay is perused, it is clear that sufficient cause has been shown by the petitioner. The petitioner has made out a case that his previous advocate failed to bring the order of which review is applied for to the notice of the petitioner. This means that there was a communication gap between the advocate and the party. There is nothing to infer that the delay was in

order to protract the proceedings or that there was some oblique motive.

7] No doubt, in a matter of this nature, there is bound to be some lapse on the part of the party. However, merely on that ground, the application for condonation of delay cannot be dismissed. The explanation submitted by the petitioner does not smack of any *mala fides*. Therefore, subject to payment of costs, the application for condonation of delay deserves to be allowed.

8] The learned Trial Judge whilst considering the application for condonation of delay has addressed itself to the merits of the review petition. This was also not permissible.

9] For the aforesaid reasons, the impugned order dated 17<sup>th</sup> January 2015 is set aside, subject to payment of costs of Rs.5,000/- within a period of six weeks from today.

10] If the amount of costs indeed paid to the respondents within six weeks from today or in any case deposited in the Trial Court within six weeks from today, the application for condonation of delay shall be treated as allowed and the learned Trial Court to proceed with the hearing of the review petition on its own merits. If however, the costs are not paid/deposited within six weeks from today, then this petition shall be deemed to have been dismissed with costs of Rs.2000/-.

11] Rule is made absolute to the aforesaid extent.

12] All concerned to act upon an authenticated copy of this order.

**(M. S. SONAK, J.)**