

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION No. 2816 OF 2017
IN
FIRST APPEAL (ST) No. 8656 OF 2017

Satnam Namita and Associates and Ors. ..Applicants
Vs.
Ramniklal Lavjibhai Parmar and Anr. ...Respondents

Mr.Hassan Ullah Khan for Applicants
Ms. K.C. Nichani i/b. Ms. Nafisa Kapre for Respondent No.1
Ms. Jyotsna Pandhi a/w. Mohamedali M. Chunawala I/b. Satnam
Namita & Associates for Respondent No.2 -Union of India.

CORAM: K.K. TATED, J.

DATED : JUNE 14, 2019

P.C. :

1. Heard learned counsel for the parties.
2. By this civil application, the Applicant Insurance Company – Original Defendant Nos. 1 to 3 seeks condonation of 326 days' delay in filing the First Appeal, challenging the judgment and decree dated 19th March, 2016 passed by the Bombay City Civil Court at Bombay in Suit No. 7841 of 1998 (High Court Suit NO. 1592 of 1998), directing the Applicants – Original Defendant Nos.1 to 3 to pay Rs.3,50,000/-with interest @ 9% p.a. to the Respondents -Original Plaintiffs.
3. Learned counsel for the Applicants submits that because of lack of communication between the Applicants and their Advocate

appearing in the trial Court, it remained on the part of Applicants to prefer the present First Appeal within time. He submits that the Applicants learnt about the impugned judgment and decree passed against them, on 7th June, 2016. Thereafter the Applicants were considering its legal position with regard to the reasons given by the learned Trial Judge in the impugned judgment. He submits that in the aforesaid process, there is a delay in filing the first appeal. He submits that there is no intentional delay on the part of the Applicants. He submits that the Applicants have good chance of success in the present proceeding. He submits that in the interest of justice, this Hon'ble Court be pleased to condone the delay in filing the First Appeal. He submits that if the delay is not condoned, irreparable loss would be caused to them.

4. On the other hand, learned counsel Ms. K.C. Nichani for Respondent No.1- Original Plaintiff vehemently opposed the present civil application. She submits that the Applicants have not shown sufficient cause for condonation of delay in filing the first appeal. She submits that though the applicants learnt about the impugned judgment and decree passed by the Trial Court on 7th June, 2016, the Applicants filed the appeal on 16th March, 2017 i.e. more than 9 months. There is no proper explanation for 9 months why Applicants took time in filing the present proceedings before this Court. She submits that reasons given in paragraph 3 of the civil application do not show any cause for delay in filing the first appeal before this Court immediately. She submits that

the Applicants had knowledge about the impugned judgment and decree much before that, because the same was transferred to Chandigarh Court for execution. On the basis of these submission, the learned counsel for Respondent No.1-Original Plaintiff submits that there is no substance in the present civil application and the same is required to be dismissed with costs.

5. I heard both the sides at length. It is to be noted that in the present proceedings, the Applicants are residing a Chandigarh. The Applicants learnt about the decision taken by the trial court through their advocate on 7th June, 2016. Thereafter, the Applicants were considering whether appeal to be filed or not. In that process there was a delay in filing the First Appeal.

6. 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."

Considering the facts and circumstances of the present case

and in view of the law laid down by the Apex Court in the matter of N.Balakrishnan (Supra), I am of the opinion that the Applicants have made out a case for allowing the Civil Application, but at the same time they have to pay the costs of Rs.5,000/- to the Respondent No.1 herein.

7. Hence, following order:

- (a) Delay in filing the First Appeal is condoned.
- (b) Applicant to pay costs of Rs.5,000/- to Respondent No.1 or their advocate on or before 6th July, 2019 and place on record a receipt to that effect, failing which, civil application shall stand dismissed without referring back to the Court.
- (c) Civil Application stands disposed of accordingly.

(K. K. TATED, J.)