

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.469/2018  
IN  
CIVIL REVISION APPLICATION (ST) NO.14630/2018

Smt. Vimal Laxman Bhundere ... Applicant

V/s.

Prabhawati Prabhakar Godambe & Ors. ... Respondents

Mr. J. M. Joshi for the Applicant  
Ms. Gauri Godse for Respondent Nos.1 to 4  
Mr. A. R. Gole for Respondent No.5.

**CORAM: K.K. TATED, J.**

**DATED : FEBRUARY 22, 2019**

**P.C. :**

1 Heard. By this Civil Application, the Applicant Defendant No.1 seeks condonation of delay of 156 days in filing the Civil Revision Application challenging the order dated 01.07.2017 passed by the Jt. Civil Judge, Junior Division Bhiwandi below Exhibit- 24 in Regular Civil Suit No. 775/2011.

2 The learned counsel for Respondent No.1 to 4 filed Affidavit-in-Reply dated 18.02.2019. Same is taken on record.

3 The learned counsel for the Applicant submits that because of medical problem, it remained on their part to file the Civil Revision Application within time. In support of this contention,

he relies on discharge summary of the Applicant's husband, issued by the Ayush Hospital which is at Exhibit- A page 7 and Doctor's certificate dated 01.09.2017. He further submits that the Applicant has good chance of success in the matter. He further submits that in the interest of justice, this Hon'ble Court be pleased to condone the delay and the matter may be heard on merits.

4 On the other hand, the learned counsel for the Respondent has vehemently opposed the Civil Application. She submits that the reasons given by the Applicant in the Civil Application are not sufficient to condone the delay in filing the Civil Revision Application. Hence, the Civil Application is liable to be dismissed with costs.

5 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."

6 Considering the submissions made by the learned counsel for the Applicant and the law declared by the Apex Court, I am satisfied that the Applicant has made out a case for allowing the

Civil Application.

7 Hence, the following order is passed:

a. The Civil Application is allowed in terms of prayer clause (a), which reads thus :

*“(a) That this Hon'ble Court be pleased to condone the delay of about 156 days caused in filing the above said Revision Application filed by the Applicant before this Hon'ble Court challenging the impugned judgment and order dated 01.07.2017 passed by the learned Civil Judge, Junior Division, Bhiwandi below Exhibit- 24 in R.C.S.No.775/2011.*

b. The Applicant to pay costs of Rs.5000/-.

c. Cost shall be paid to Kirtikar Law Library, High Court, Mumbai, on or before 16.03.2019 and place a receipt thereon on record, failing which the Civil Application shall stand dismissed without further reference to the court.

d. Civil application stands disposed off accordingly.

e. It is made clear that this court has not granted any stay to the proceedings before the Trial Court. Hence, the Trial Court can proceed with the hearing of the suit on its own merits.

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