

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.6043 OF 2018

Gokulesh Premises Co.Op. Society Ltd. ...Petitioner

vs.

The Board of Trustees of the Port
of Mumbai and Others ...Respondents

Mr. Piyush Raheja a/w. Tejal K. a/w. Mr. D. Pandya I/b. M/s.
Ashwin Pandya, for the Petitioner
Mr. Mandar Bangale I/b. The Law Point, for the Respondents.

CORAM : M. S. SONAK, J.

DATE : APRIL 25, 2019

ORAL JUDGMENT

. Heard Mr. Piyush Raheja, learned counsel for the Petitioner
and Mr. Mandar Bangale, for the Respondents.

2. Rule. Rule is made returnable forthwith with consent of and
at the request of learned counsel for the parties.

3. The challenge in this Petition is to the order dated 16th April,
2018 by which the learned Appeal Court has dismissed the
Petitioner's application for condonation of delay of 102 days in
instituting the Appeal against the eviction order dated 7th
December, 2017 made by the Estate officer under the Public

Premises (Eviction of Unauthorized Occupants Act), 1971 and for payment of rent and damages.

4. Mr. Raheja, learned counsel for the Petitioner submits that the delay of 102 days was satisfactorily explained. He submits that the Petitioner have gained nothing on account of this delay because in the meanwhile the Petitioner have been evicted in pursuance to the order made by the Estate officer. He submits that the Petitioner have a statutory right of appeal and this right could not have been taken away in the facts and circumstances of the present case. He relies on ***N. Balakrishnan vs. M. Krishnamurthy, (1998) 7 Supreme Court Cases 123*** to urge that the expression “*sufficient cause*” should be construed liberally. He submits that, the Appeal Court has relied upon ***S. D. Bandi vs. Divisional Traffic Officer, Karnataka State Road Transport Corporation and Others, (2013) 12 Supreme Court Cases 631*** which basically concerned the Government officials over staying in their official quarters. He submits that at most costs could have been imposed upon the Petitioner. On the basis of instructions, he submits that the Petitioner are volunteering for payment of costs to the extent of Rs. 1 lakh to the Respondents. For all these reasons,

he submits that the impugned order may be set aside and the delay in instituting the Appeal be condoned.

5. Mr. Mandar Bangale, learned counsel for the Respondents defend the impugned order on the basis reasoning reflected therein. He points that in such matters, the Petitioner were required to make out not only sufficient cause but further they have to establish that there was compelling circumstances due to which the Appeal could not be filed within the prescribed limitation of 12 days. He submits that the reasons stated by the Petitioner do not constitute any sufficient cause made than any compelling circumstances. He relies on **S.D. Bandi** (supra) and **Union of India vs. Popular Construction Co., (2001) 8 Supreme Court Cases 470** to urge that the impugned order may not be interfered with.

6. In the present case, the delay application in respect of condonation was applied for was of 102 days. The reasons set out in the application seeking condonation of delay was that the Estate Officer made *ex-parte* order, the copy of which was served upon the Joint Secretary of the society. It is further stated that since the

joint Secretary did not know to read English, he handed over the copy to the watchman for onward transmission. The watchman gave the copy of the impugned order to the Secretary of the society on 22nd March, 2018. On this basis, it was submitted that the Appeal could not be filed within prescribed period of limitation. The learned counsel for the Petitioner has pointed out that the eviction order affects not less than 93 occupants. He points out that in the execution of the order of the Estate Officer, all these 93 occupants have already evicted. According to me, though, the Petitioner could have been more diligent, it cannot be said that the explanation offered was explanation which either smacks of *malafide* or was put-forth as dilatory tactic. The Appeal Court required to consider the cause shown, from this perspective.

7. In **N. Balakrishnan** (supra) the Supreme Court held that the primary function of a Court is to adjudicate the dispute between the parties and to advance substantial justice. Time limit fixed for approaching the court in different situations is not because on the expiry of such time a bad cause would transform into a good cause. Rule 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. 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. A court knows that refusal to condone delay would result 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.

8. In **N. Balakrishnan** (supra) the Supreme Court also held

that once the Court accepts the explanation as sufficient it is the result of positive exercise of discretion and normally the superior court should not disturb such finding, much less in revisional jurisdiction, unless the exercise of discretion was on whole untenable grounds or arbitrary or perverse. But it is a different matter when the first court refuses to condone the delay. In such cases, the superior court would be free to consider the cause shown for the delay afresh and it is open to such superior court to come to its own finding even untrammelled by the conclusion of the lower court.

9. In **S.D. Bandi** (supra), the decision made in the context of Government servants/ employees of public sector undertakings for over staying in the official quarters. No doubt, in the said decision, it is held by the Hon'ble Supreme Court that in such matters, there is no question of Appellate authority considering application for condonation of delay with too large liberality. This is obviously because otherwise the public premises may continue to be occupied by the occupants and others may be waiting in queue.

10. In the present case, the record indicates that the Petitioners

have already been evicted in execution of the orders made by the Estate Officer. This was valid consideration which was required to be taken into account. Besides, the delay in present case was only 102 days and the explanation offered neither smacks of *malafide* nor was put forth as dilatory strategy. In a society which had almost 93 members, such miscommunication is not uncommon. It is possible that the watchman did not realize the gravity of the situation and therefore there was some delay on his part in handing over the eviction order to the Secretary. Thereafter, some reasonable time was also required to seek legal advise and ultimately institute the Appeal. All these factors were required to be considered and since the same have not been considered, the impugned order warrants interference.

11. The reliance which is placed on ***Popular Construction Co.*** (supra) is entirely misplaced. That decision is an authority for the proposition that the Appeal Court has no power or jurisdiction to condone the delay of 120 days from the date of receipt of the arbitral award. The said decision proceeds on the particular provision of section 34 of the Arbitration and Conciliation Act, 1996. In the present case, the impugned order itself holds that the

provision of section 5 of the Limitation Act are applicable but the impugned order refuses to condone the delay on the ground that no sufficient cause was made out for condonation.

12. The question involved in the said case related to the applicability of provision of Section 5 and 14 of the Limitation Act. Thus the question arose in the context of particular provisions of Section 34 of the Arbitration and Conciliation Act, 1996. Again no such question arise in the present Petition. Similarly, the decision in the case of ***Consolidated Engineering Enterprises vs. Principal Secretary, Irrigation Department and Ors., (2008) 7 Supreme Court Cases 169*** is also entirely distinguishable and has no nexus to the issue which arises in the present matter.

13. In ***N. Balakrishnan*** (supra) upon which the Petitioner placed reliance, the Hon'ble Supreme Court has held that whilst sufficient cause should be liberality construed, the Court whilst condoning delay should not forget the opposite party altogether. It must be borne in mind that he is a loser and he too would have incurred quiet 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.

14. Following the aforesaid principles, it is only appropriate that the Petitioner to pay costs of Rs. 1 lakh to the Respondents. According to me, such costs would offer sufficient compensation to the Respondents – Trust in the peculiar facts and circumstances of the present case.

15. Accordingly, the impugned order dated 16th April, 2018 is set aside.

16. The delay in instituting the Appeal is condoned. The Appeal is restored to the file of the Appeal Court which is directed to dispose of the Appeal in accordance with law and on its own merits.

17. Petitioner to pay costs of Rs. 1 lakh to Respondents within a period of six weeks from today. The receipt of such payment to be produced before the Appeal Court. In case, there is any difficulty in payment, the Petitioner are at liberty to deposit costs before the Appeal Courts within four weeks from today and Respondents are granted liberty to withdraw the same unconditionally.

18. It is made clear that if within six weeks the costs are not paid or deposited then, this Petition shall be deemed to have been dismissed with costs of Rs. 25,000/- without any further reference to this Court.

19. Rule is made absolute in the aforesaid terms with costs.

(M. S. SONAK, J.)