

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION  
WRIT PETITION NO. 7952 OF 2019

Shri. Rajendra R. Chaplot .. Petitioner  
vs.  
Shri. Prakash T. Dabake .. Respondent

Mr. Girish Paryani I/b A& G Legal Associates LLP for the  
Petitioner.  
Mr. R.M. Haridas for the Respondent.

**CORAM : R. G. KETKAR, J.**  
**DATE : 18<sup>th</sup> JULY 2019.**

**P.C. :-**

1] Heard Mr. Girish Paryani, learned counsel for the  
petitioner and Mr. R.M. Haridas, learned counsel for the  
respondent.

2] By this petition under Article 227 of the Constitution of  
India, the petitioner has challenged the order dated 9<sup>th</sup> May  
2019 passed by the learned 2<sup>nd</sup> Joint Civil Judge, Senior  
Division, Kalyan (for short "*Trial Judge*") in Miscellaneous  
Application No. 303 of 2016. By that order, the learned Trial  
Judge rejected the application made by the petitioner under  
Section 5 of the Limitation Act, 1963 for condoning the delay  
of 189 days in filing the application for setting aside the *ex-  
parte* decree passed in R.C.S. No. 451 of 2014.

3] Rule. Mr. Haridas waives service. With the consent of parties, Rule is made returnable forthwith and the petition is taken up for final disposal.

4] Mr. Paryani submitted that having regard to the fact the delay of 189 days, the learned Trial Judge ought to have condoned the delay. He relied upon the decision of ***State of Nagaland vs. Lipok Ao – AIR 2005 SC 2191***. He submitted that in this case the Apex Court held that one of the factors for condoning the delay is shortness. Having regard to the fact that the delay is of 189 days, he submitted that the delay has to be condoned.

5] On the other hand, Mr. Haridas seriously opposed the petition. He submitted that no sufficient cause is made out for condoning the delay and therefore, the learned Trial Judge was justified in rejecting the application.

6] I have considered the rival contentions advanced by both the parties and perused the material on record.

7] After perusing the material on record and also having regard to the fact that the delay is of 189 days, in my opinion, the learned Trial Judge should have condoned the delay and by not condoning the delay, the application made by the petitioner for setting aside the *ex-parte* decree will stand dismissed on technical ground and not on merits. The consequences that will flow therefrom are serious and the respondent will be in a position to execute the decree.

8] In view of the decision in *State of Nagaland (supra)*, the delay of 189 days in filing the application for setting aside the *ex-parte* decree passed in R.C.S. No. 451 of 2014 is liable to be condoned and is hereby condoned. Hence, the following order:

(a) The impugned order dated 9<sup>th</sup> May 2019 passed by the learned Trial Judge in Miscellaneous Application No. 303 of 2016 is hereby set aside. Miscellaneous Application No. 303 of 2016 is allowed by condoning the delay of 189 days:

(b) The learned Trial Judge is directed to decide the application of the petitioner for setting aside the *ex-parte* decree passed in R.C.S. No. 451 of 2014 on its own merits and in accordance with law;

(c) All contentions of all parties are expressly kept open.

(d) Rule is accordingly made absolute with no order as to costs.

**(R. G. KETKAR, J.)**