

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Civil Application No. 1033/2018
in
Appeal from Order No. 736/2018

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders	Court's or Judge's orders.
Mr.Sunil Avyas I/b. Mansukhlal Hiralal & Co. for the Applicant Mr. Harish Pandya a/w. Mittal Munoth I/b. Sheela Mystry for Respondent	

CORAM : K.K.TATED, J.
DATED : 18/03/2019

P.C.

Heard. By this Civil Application, the Applicant is seeking condonation of 102 days delay in filing the Appeal from Order challenging the order dated 21.02.2018 passed by the Bombay City Civil Court, Mumbai in Notice of Motion No.3543/2015 in Suit No.2317/2014.

2 The learned counsel for the Applicant submits that the authorized person was not keeping well and therefore, there was delay on their part to file the present proceedings. In support of his contention, he relies on para 8 of the Civil Application.

3 The learned counsel for the Applicant submits that they have good chance of success in the matter. He submits that if delay is not condoned, irreparable loss will be caused to them. He submits that in the interest of justice, this Hon'ble Court be pleased to condone the delay in filing the Appeal from Order and the matter be heard on merits.

4 On the other hand, the Respondent - Plaintiff has vehemently opposed the Civil Application. He submits that the Applicant has failed to disclose sufficient cause for condonation of delay of 102 days in filing the Appeal from Order. He submits that though the resolution was passed by the company on 16.03.2018, the Applicant filed the present proceedings on 12.07.2018. There is no explanation from the Applicant as to why there was delay on their part in filing the appeal. He submits that the Applicant does not have any case on merits. Hence, the Civil Application is required to be dismissed with costs.

5 It is to be noted that because of ill health of the authorised officers there was delay in

filing the Appeal from Order.

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.”

7 Considering the submissions made by the learned counsel for the Applicant and the reasons disclosed in the Civil Application and the law laid down by the apex court, I am satisfied that the Applicant has made out a case for allowing the Civil Application. At the same time, the Applicant has to pay costs.

8 Hence, the following order is passed:

- a. Delay in filing the appeal is condoned.
- b. The Applicant shall pay costs of Rs.1500/-.
- c. The costs shall be paid to the Kirtikar Law Library, High Court, Bombay on or before 31.03.2019 and place a receipt thereof on record, failing which the Civil Application shall stand dismissed without further reference to the court.
- d. Civil Application stands disposed of accordingly.

(K.K.TATED, J.)