

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**CIVIL APPLICATION NO.522 OF 2018
IN
CIVIL REVISION APPLICATION (ST) NO.21248 OF 2018**

Prince Estate Development

Pvt. Ltd. & ors.

...Applicants

v/s.

Behram Jamshed Mistry & ors.

...Respondents

Mr. Kunal Bhanage i/b Lalit Jain for the applicants.

Mr. Behram Mistry -respondent no.2 in person.

CORAM : DAMA SESHADRI NAIDU, J.

7th October 2019.

P.C.

The first applicant is the company and other applicants are the executives of the company. They filed this CRA with a delay of, according to them, 114 days. To have it condoned, the applicants have filed this Civil Application.

2. To put the issue in prospective, we need to gather the background facts.

3. To begin with, the respondents 1 to 4, as the plaintiffs, filed RAD Suit No.33/1995 before the Small Cause Court, Bombay. They sought a declaration and possession of the suit property, but the trial Court dismissed the Suit, through its judgment dt.28.08.2002. Aggrieved, the respondents

filed Appeal No.466/2003. The Appellate Bench, too, on 2nd July 2005 dismissed the appeal. Further aggrieved, the respondents filed Writ Petition No.6339/2005. This Court, through its judgment dt.04.07.2016, set aside the Appellate Bench's judgment and remanded the matter.

4. On remand, the Appellate Bench allowed the respondent's appeal on 18th December 2017. Aggrieved, the petitioners, that is the original defendants, filed CRA (st) No.21248/2018. They have filed it with a delay of 114 days.

5. In the above factual background, the learned counsel for the applicants submits that as the Appellate Bench rendered the judgment on 18th December 2017, the applicants applied for certified copies on 5th January 2018. As the copies were ready by 19th January 2018, they collected the copies on 22nd January 2018. But by the time they could file the CRA, there occurred a delay of 114 days.

6. To elaborate, the learned counsel has submitted that the 2nd applicant, who has been overseeing the first applicant company, entrusted the case, first, to one particular counsel and, then, left for the USA. After his coming back, he enquired with that counsel, who assured him that he would be filing it in the next couple of weeks. Thereafter, too, he did not file the CRA. Under those circumstances, the 2nd applicant took the file back and entrusted it to the present counsel, who filed it in the due course. According to him the delay occurred for the reasons beyond the applicants' control.

7. At any rate, the learned counsel has submitted that the respondents initially suffered concurrent findings. Later, on remand from this Court, they had a favourable verdict, for the first time. Besides that, he also reminds me

that the courts, as a matter of policy, have always taken a lenient view in condoning the delay unless the parties' conduct is contumacious. Thus, he urges this Court to condone the delay and entertain the CRA on the merits.

8. Shri Mistry, the learned counsel for first respondent, prosecuting the case *pro se*, argues that the applicant's stand about change in counsel already stands exposed. According to him, even to this day, the same counsel from whom they claim to have taken back the bundle represents them in the execution proceedings, which the respondents initiated before the trial Court.

9. Shri Mistry has also submitted that the delay is not 114 days. It is, in fact, over two years. To justify this assertion, he first submits that Article 123 of the Limitation Act governs the issue, rather than Article 131. In that context, he submits that as the applicants suffered an *ex parte* verdict from the Appellate Bench, the limitation period must be reckoned as 30 days. Shri Mistry has also submitted that delay must be reckoned from the date this Court remanded the matter for the applicants never represented before the Appellate Bench.

10. In the end, Shri Mistry has also submitted that the applicants have been guilty of filing false affidavits and suppressing material facts, besides misleading the Court. So he wants the applicants to be prosecuted as their conduct is contemptuous in terms of the Supreme Court judgment in *S.P Chengalvaraya Naidu v. Jagannath*¹. Thus, he urges this Court either to dismiss the civil application or to allow it with an exemplary cost of Rs.25 lacs.

¹ 1994 AIR 853

11. Heard Mr. Kunal Bhanage, instructed by Mr. Lalit Jain, for the applicants; and Shri Behram Mistry, the respondent no.2 *pro se*.

12. Indeed the respondents suffered an adverse verdict in the trial Court and later in the Appellate Court, too. Eventually, this Court set aside those findings and remanded the matter to the Appellate Bench. The record reveals that the applicants do not seem to have contested the matter before the Appellate Bench. That resulted in the impugned judgment, rendered on 18th December 2017.

13. If at all the applicants wanted the Appellate Bench to set aside the *ex parte* judgment or decree, perhaps Article 123 could apply. Instead, they have taken out a revision under Section 115 of CPC. And, now, the proceedings under Section 115 of CPC stand specifically governed by Article 131 of the Limitation Act. Therefore, the time prescribed for filing the revision is not 30 days, but 90 days.

14. That said, I may consider the reasons the applicants have supplied for the delay. Indeed, the 2nd applicant has assigned the reason of his initial absence and the lapses on the part of the first counsel, who could not file the revision on time. True, that counsel may still have been retained in the execution proceedings; yet, it does not mean that his services should not be dispensed with in the revision. Because of the first counsel's pre-occupation in the trial court, the applicants may have justifiably sought the legal services from another counsel.

15. I, therefore, do not find much merit in the respondents' contention that the applicants' retaining the first counsel in the trial Court must be fatal to the applicants' plea on the delay.

16. Besides, the courts are loath to throw out cases on technicalities. It is in the interest of justice that the dispute is decided on the merits.

17. Here, I do not reckon the applicants' conduct displays any callousness, nor have they abandoned the case. Much less is there any inordinate delay. At any rate, the applicants are remiss in their approach in having the Appellate Bench's judgment assailed before this Court.

Under these circumstances, I allow the civil application and condone the delay subject to the applicants' paying Rs.10,000/- as cost to the respondents 1 to 4.

(DAMA SESHADRI NAIDU, J)

L.S. Panjwani, P.S.