

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL APPLICATION NO.310 OF 2017
IN
CIVIL REVISION APPLICATION (STAMP) NO.25486 OF 2017

Paramanand Mehlumal Jhamtani .. Applicant

Versus

Shri Sharad Yashwant Kokane and Ors. .. Respondents

Mrs.Minal Chandnani for the Applicant.

Mr.S.M.Sabrad for Respondent No.1.

CORAM : K.K. TATED, J.

DATE : 10 JANUARY 2019.

P.C:-

. Heard learned Counsel for the parties.

2. Advocate Mrs. Minal Chandnani submits that advocate on record Mr. J.S. Chandnani is no more. She submits that she received instructions to appear on behalf of applicant. She undertakes to file Vakalatnama on or before 19.01.2019. Same is accepted.

3. The learned Counsel for the applicant submits that by this Civil Application they are seeking condonation of 43 days

delay in filing Civil Revision Application. She submits that because of the health problem of the applicant it remain on the part of the applicant to file Civil Revision Application within time. In support of her contention, she relies on paragraph 4 of Civil Application. She submits that applicant have good chance of success in the present proceedings. She submits that if delay is not condoned irreparable loss will cause to the applicant. She submits that in the interest of justice, this Hon'ble Court be pleased to allow the present Civil Application and matter may be heard on its own merits.

3. On the other hand, the learned Counsel Mr. S.M. Sabrad appearing on behalf of respondent No.1 vehemently opposed the present Civil Application. Respondent has filed their Affidavit-in-reply dated 04.10.2017. Learned Counsel for the respondent submits that, applicant has not shown sufficient cause for condonation of inordinate delay in filing Civil Revision Application. He further submits that even the medical certificates placed on record by the applicant, are only for certain period. Therefore, there is no question of allowing the present Civil Application and same is required to be dismissed with cost.

4. I heard both sides at length. It is to be noted that there was delay on the part of the applicant to file the present proceedings before this Court because of old age. To that effect, he has given reason in paragraph 4 of the Civil Application.

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 learned Counsel for the applicant, avernments made in Civil Application and as the law laid down by the Apex Court, I am satisfied that the applicant has made out case for allowing this Civil Application. Hence, following order :

- a) Delay in filing Civil Revision Application is condoned.
- b) Civil Application stands disposed of accordingly.
- c) No order as to costs.

(K.K.TATED, J.)