

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.26/2015

Suresh Shivram Palekar ... Petitioner

V/s.

Shantanu Shankar Deshpande & Ors. ... Respondents

Mrs. Deepa Punde I/b. S. S. Punde for the Petitioner

CORAM: K.K. TATED, J.
DATED : JANUARY 23, 2019

P.C. :

1 Heard. This court, by order dated 04.02.2015 issued notice to the Respondents stating that if time permits the matter would be decided finally at the stage of admission itself.

2 In spite of service, none appeared for the Respondents.

3 By this petition under Article 227 of the Constitution of India the Petitioner challenges the order dated 24.06.2014 passed by the learned District Judge, Pune in Civil Misc. Application No.519/2013 rejecting their Application for condonation of delay in making the Application for restoration of civil appeal No.37/2012 which stood dismissed for non prosecution by order dated 06.12.2012.

4 The learned counsel for the Petitioner submits that the Trial Court erred in coming to the conclusion that the Petitioner has failed to disclose sufficient cause for condonation of 157 days

delay. She submits that the Petitioner is a senior citizen of 67 years old. He is suffering from blood pressure and is a diabetic, because of which it remained on his part to take appropriate steps for restoration. In support of this contention, the Petitioner has placed on record the medical certificate and papers. She submits that the appellate court has not considered all those documents and dismissed their Application for condonation of delay. She submits that the Petitioner has good chance of success in Appeal No.37/2012. She submits that in the interest of justice this Hon'ble Court be pleased to allow the Writ Petition setting aside the order dated 24.06.2014 directing the appellate court to decide their Application for restoration of Civil Appeal No.37/2012 on its own merits. She submits that because of mistake on the part of an Advocate a litigant should not suffer.

5 In the present proceedings, civil appeal No.37/2012 was dismissed by appellate court on 06.12.2012 for not taking steps. It is to be noted that taking steps in the appeal is a duty of the advocate who files vakalatnama. Because of mistake on the part of an Advocate, a litigant should not suffer.

6 In any case, the Petitioner has already placed on record a medical certificate as well as the documents to show that he was not keeping well during the relevant period. Hence, the appellate court erred in coming to the conclusion that the Petitioner has failed to make out sufficient cause for condonation of 157 days delay in making the Application for restoration of the appeal.

7 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.”

8 Considering these facts and the law declared by the apex court, I am of the opinion that the Petitioner has made out a case for allowing the Writ Petition. Hence, the following order is passed:

- a. The order dated 24.06.2014 passed by the District Judge-15, Pune is set aside.
- b. The Application made by the Petitioner for condonation of delay in filing the Application for restoration of the Civil Appeal No.37/2012 is allowed.
- c. The appellate court is directed to decide the Petitioner's Application for restoration of Civil Appeal No.37/2012 on its own merits.
- d. The Writ Petition stands disposed of accordingly.
- e. No order as to costs.

(K. K. TATED, J.)