

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Civil Application No. 158/2019
in
Appeal from Order (ST) No.26690/2018

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders	Court's or Judge's orders.
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Mrs. Madhuri More for the Applicant
Mr. Amogh Singh I/b. D. P. Singh for the Respondent

CORAM : K.K.TATED, J.
DATED : APRIL, 8, 2019

P.C.

Heard. By this Civil Application, the Applicant corporation seeks condonation of 129 days delay in filing the Appeal from Order challenging the order dated 06.04.2018 passed by the Bombay City Civil Court, Mumbai in Notice of Motion No.1165/2018 in L.C.Suit No.1774/2016.

2 The learned counsel for the Applicant submits that the concerned advocate to whom the matter was assigned was busy in other proceedings. Hence, it remained on his part to complete the draft memo of appeal immediately. Therefore, there is delay in filing the Appeal from Order. In

support of his contention, he relies on para 3 and 4 of the Civil Application. He submits that the Applicant has good chance of success. He submits that in the interest of justice, this Hon'ble Court be pleased to condone the delay.

3 On the other hand, the learned counsel for the Respondent has vehemently opposed the Civil Application. He submits that the Applicant has not shown sufficient cause for condonation of inordinate delay of 129 days in filing the Appeal from Order. He submits that the reasons given by the Applicant in the Civil Application that the concerned advocate was busy in another matter, shortage of staff and heavy work load, cannot be a good ground to condone the delay.

4 In support of his contention, the learned counsel for the Respondent relies on the judgment of this court in the matter of ***Union of India Vs. M/s. EMCO Agencies in Notice of Motion No.1496/2018 in Appeal (L) No.33/2018*** dismissing the Notice of Motion filed by the Union of India for condonation of more than 10 months delay in filing the First Appeal. He has

placed on record a copy of the said order dated 13.12.2018. Same is taken on record and marked "X" for identification.

5 The learned counsel for the Respondent submits that considering the reasons given by the Applicant and the order dated 13.12.2018 (supra), there is no substance in the Civil Application. Same be dismissed with costs.

6 It is to be noted that in the present proceedings the Applicant has specifically stated in para 3 that because of shortage of staff and heavy work load it remained on their part to file the Appeal from Order within time. It is to be noted that the delay in the present matter is of 129 days, whereas in the order cited by the advocate for the Respondent the delay was of 10 months.

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 ut 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 the facts and circumstances of the present case and in view of the law laid down by the Apex Court in the matter of N.Balakrishnan (Supra), I am of the opinion that the Applicants have made out a case following the Civil Application. At the same time, the Applicant has to pay costs of Rs.500/- to the Respondent.

9 Hence, the following order is passed:

- a. Delay in filing the Appeal from Order is condoned.
- b. The Applicant shall pay costs of Rs.500/- to the Respondent on or before 04.05.2019 and place a receipt thereof on record, failing which the Civil Application shall stand dismissed without further reference to the court.
- c. Civil Application stands disposed of accordingly.
- d. No order as to costs.

(K.K.TATED, J.)