

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Civil Application No.4147/2017
in
First Appeal (ST) No.29921/2017

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders	Court's or Judge's orders.
Mr. Shree Ganesh Khaire for the Applicant Mr. Asad T. Bukhari I/b. Hussein & Co. for Respondent No.1.	

CORAM : K.K.TATED, J.
DATED : JULY 9, 2019

P.C.

1 Heard. Office Note shows that the Civil Application stood dismissed against Respondent No.2 Girish @ Sabya Tribhuvan Patel.

2 By this Civil Application, the Applicant is seeking condonation of 28 days delay in filing the First Appeal challenging the judgment and decree dated 05.01.2017 passed by the Bombay City Civil Court at Mumbai in Chamber summons No.2147/2014 dismissing their application to stay the operation and implementation of the judgment and order dated 29.01.2014 and also for stay

to the execution of writ of warrant of possession dated 28.01.2014.

3 The learned counsel for the Applicant submits that the Applicant is senior citizen. Hence, it remained on his part to take immediate action as soon as the order was passed by the Trial Court. He submits that the Applicant was not keeping well. He was hospitalized. He submits that thereafter in October 2017, the Applicant himself was admitted to hospital. Because of these problems, it remained on their part to take appropriate steps for filing the present appeal immediately in this court. He submits that they have good chance of success in the matter. He submits that in the interest of justice, this Hon'ble Court be pleased to condone the delay in filing the First Appeal. He submits that if delay is not condoned irreparable loss will be caused to them.

4 Though the Civil Application was served on the Respondent No.1, there is no reply. The learned counsel for Respondent No.1 has vehemently opposed the Civil Application. He submits that the Applicant has not

shown sufficient cause for condonation of delay. He submits that the Applicant has not shown any documentary evidence and/or proof to show that the Applicant's wife was not keeping well and she was hospitalised as stated in para 6 of the Civil Application. He submits that even the Applicant has not placed on record any documentary evidence to show that, he himself was admitted in the hospital in October 2017. This itself shows that the Applicant has not given true facts. Hence, the Civil Application be dismissed with costs.

5 It is to be noted that in the present proceedings the Applicant is a senior citizen. The reason given by the Applicant in para 6 to 10 of the Civil Application show that because of medical problem, it remained on his part to take immediate steps to file the present First Appeal.

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, the reasons given by the Applicant in the Civil Application and the law declared 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 of Rs.5000/- to Respondent or their advocate within four weeks from today.

8 Hence, following order is passed:

- a. Delay in filing the First Appeal is condoned.
- b. The Applicant shall pay costs of Rs.5000/- to Respondent or their advocate and place a receipt thereof on record on or before 16.08.2019, failing which the Civil Application shall stand dismissed without further reference to the court.
- c. The Civil Application stands disposed of accordingly.

(K.K.TATED, J.)