

Shailaja

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION
CIVIL REVISION APPLICATION NO.622 OF 2018

P.D.R. Videotronics (India) Pvt. Ltd.	]	Applicant
Vs.		
Maharashtra Film Stage & Cultural	]	
Development Corporation & Anr.	]	Respondents

.....

Mr. Kunal Kumbhat i/b Sunanda Kumbhat, for Applicant.
Mr. N.R. Bubna, for Respondent No.1.

.....
CORAM : R.G. KETKAR, J.

DATE : 30TH JANUARY, 2019.

P.C.

Heard Mr. Kumbhat, learned Counsel for the applicant and Mr. Bubna, learned Counsel for respondent No.1 at length.

2. By this application under section 115 of the Code of Civil Procedure, 1908 (for short 'C.P.C'), the applicant has challenged the order dated 19th September, 2018 passed by the learned Ad-hoc Judge, City Civil Court, Mumbai in Condonation for Delay Application No.311 of 2018 in Suit No.8477 of 1986. By that order, the learned Judge rejected the application for condonation of delay in filing Review Petition in respect of the order dated 19th September, 2017. In view thereof, leave to convert Civil Revision Application into Writ Petition granted. Amendment shall be carried out within one week from today.

3. Rule. Mr. Bubna waives service on behalf of respondent No.1. Leave to delete respondent No.2 is granted as no relief is claimed against

respondent No.2 in the present Petition. Amendment shall be carried out within one week from today.

4. In support of this Petition, Mr. Kumbhat submitted that during the course of cross-examination of D.W.1, Pratap Ajgekar, the learned trial Judge rejected the question by passing following order on 19th September, 2017;

“Adv for plaintiff asked question about the affidavit filed in Notice of Motion No.980/04 which is not affirmed by the witness. So also plaintiff have not included the said affidavit in the list of documents hence question is rejected”.

He submitted that on 21st September, 2017, application for certified copy was made and the certified copy was made available on 17th February, 2018. In the meantime, the petitioner has filed application at Exhibit 53 on 21st November, 2017 for review of the order. While passing the impugned order, the learned trial Judge observed in paragraph 6 that even the application at Exhibit 53 was not filed within a period of limitation of 30 days from passing the order. The learned trial Judge, however, did not consider the fact that certified copy was delivered only on 17th February, 2018. The trial Judge ought to have excluded time spent by the petitioner between 21st September, 2017 and 17th February, 2018 while considering the issue of limitation. He, therefore, submitted that delay deserves to be condoned.

5. On the other hand, Mr. Bubna has invited my attention to the cross-examination of D.W.1 dated 19th September, 2017 conducted before the learned trial Judge. He submitted that after rejecting the question posed by plaintiffs' Advocate, D.W.1 was cross-examined on 19th September, 2017. The cross-examination was deferred till 21st September, 2017. Again, on 21st September, 2017, cross-examination of D.W. 1 was conducted and it was deferred till 26th September, 2017. On 26th September, 2017, cross-

examination was concluded and witness was discharged. He submitted that the petitioner has also filed application dated 21st September, 2017 for striking out portion of cross-examination of D.W.1 and the same is pending. The plaintiff is sitting tight over the interim order and continues to be in possession of the property belonging to the first respondent on leave and licence basis.

6. I have considered the rival submissions advanced by learned Counsel for the parties. I have also perused the material on record. As mentioned earlier, by order dated 19th September, 2017, the trial Court rejected the question posed by plaintiff's Advocate to D.W.1. On 21st September, 2017, the application for certified copy was made. Mr. Bubna submitted that, however, there were office objections and they were removed on 1st February, 2018. Be that as it may. The fact remains that the petitioner filed application for certified copy on 21st September, 2017. Not only that on 21st November, 2017, the plaintiff filed application for review of the order dated 19th September, 2017. By that time, certified copy was not ready. That application was disposed of as not pressed. In view of the petitioner filing review petition, the learned trial Judge ought to have appreciated that on one hand, application Exhibit 53 was disposed of as not pressed and on the other, application for condoning delay in filing review petition is also rejected. With the result, Petitioner is left with no remedy. In such circumstances, the learned trial Judge should have condoned the delay and decided the review petition on merits. It is well settled principle of law that while considering application for condonation of delay, the Court has to adopt liberal approach. The learned trial Judge ought to have condoned the delay of 45 days.

7. In the case of **State Of Nagaland vs Lipok Ao & Ors., (2005) 3 SCC 752**, it is held by the Apex Court that what counts is not the length of the delay but the sufficiency of the cause and shortness of the delay is one of the

circumstances to be taken into account in using the discretion. The expression “sufficient cause” should be considered with pragmatism in a justice oriented approach rather than the technical detection of sufficient cause for explaining every day's delay.

8. In view thereof, the impugned order is set aside. Delay of 45 days in filing the review petition is condoned. All contentions of the parties on merits are expressly kept open. Having regard to the fact that the suit is of the year 1986, the learned trial Judge is requested to dispose of the suit as expeditiously as possible and in any event, within 6 months from production of authenticated copy of this order. If the trial Court finds that the plaintiff is not extending co-operation for disposal of the suit in this time limit, it will also consider vacating the interim order passed in favour of the plaintiff. Rule is made absolute with no order as to costs.

[R.G. KETKAR, J.]