

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

CIVIL APPLICATION NO.52 OF 2017

IN

APPEAL FROM ORDER (ST.) NO.34594 OF 2016

Tridhaatu Suraj Viilla Developers LLP .. Applicant

In the matter between

Tridhaatu Suraj Viilla Developers LLP .. Applicant

vs.

Deepak Shamsundar Gavaskar and Ors. .. Respondents

Mr.Vishesh Kalva i/b M/s.Vidhii Partners for the applicant

Mr.D.V.Saroj with Ms.Alka P. Mungekar for the respondent no.1

**CORAM : K. K. TATED, J
DATE : APRIL 10, 2019**

P.C.:

. Heard.

2 The learned counsel for the Respondent no.1 filed their affidavit in reply. Same is taken on record and marked 'X' for identification.

3 The learned counsel for the Applicant submits that by this Civil Application, they are seeking condonation of 191 day delay in filing Appeal from Order challenging the order dated 30.04.2016 passed by Bombay City Civil Court at Bombay in Notice of Motion No.4392 of 2015 in L.C.Suit No.2463 of 2012.

4 The learned counsel for the Applicant submits that advocate on record for the Applicant in Trial Court failed to file application for certified copy immediately and hence, there is delay in filing the present Appeal from Order. In support of this contention, he relies on paragraph 6 of the Civil Application which reads thus:

"6. The Applicant submits that there is a delay in filing the present Appeal for the reason that the Applicants erstwhile advocates before the Ld.Trial Court failed to procure certified copy of the Impugned Order in time. Thereafter on 5th July 2016, the Respondent No.1 filed an application for modification of the Order. The Impugned Order was modified on 22nd November 2016. The Applicant received certified copies of the orders dated 30th April, 2016 and 22nd November, 2016 and are filing the present application."

5 The learned counsel for the Applicant submits that they have good chance of success in the present proceeding. He submits that because of mistake on the part of advocate, litigant should not suffer. He submits that in the interest of justice, this

Hon'ble court be pleased to condone the delay in filing Appeal from Order and matter be heard on its own merits.

6 On the other hand, the learned counsel for the Respondent no.1 vehemently opposed the present Civil Application. He submits that in the present proceeding, though the impugned order was passed on 30.4.2016 by the Trial Court, Applicant filed application for certified copy on 28.11.2016 and same was ready on 11.2.2016. Thereafter Applicant filed present Appeal from Order on 16.12.2016. He submits that Applicant failed to disclose sufficient cause for condonation of more than 229 days delay in filing Appeal from Order. Hence, there is no question of entertaining the present Civil Application. Hence same is required to be dismissed with costs.

7 Heard.

8 It is to be noted that advocate for the Applicant specifically stated in the Civil Application that because of mistake on the part of advocate there was delay in filing application for certified copy.

9 The Apex Court in the matter of **Smt.Lachi Tewari and others vs. Director of Land Records and Others, 1984 (Supp.) SCC 431** held that because of mistake on the part of the advocate, a litigant should not suffer.

10 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."

11 Considering the submissions made by the learned counsel for the Applicant and the averments made in Civil Application and the law laid down in the above authorities, I am satisfied that the Applicant has made out a case for allowing the Civil Application. At the same time, he has to pay cost of Rs.250/- to the Respondent no.1. Hence, following order is passed:

a Delay in filing Appeal from Order is condoned.

b Applicant to pay cost of Rs.250/- to the Respondent no.1 or their advocate on or before 3.5.2019 and file receipt to that effect in the Registry, failing which Civil Application shall stand dismissed without referring back to the court

c Civil Application stands disposed of accordingly.

(K.K.TATED, J.)