

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

NOTICE OF MOTION NO.628 OF 2014

IN

SUIT NO.690 OF 2013

Anil V. Ranadive

...Applicant/Orig. Defendant

In the matter between

Satish Shankarrao Paralkar and Anr.

...Plaintiffs

Versus

Anil V. Randive

...Defendant

.....

Ms Vasanti Dighe for the Applicant /Orig. Defendant.

Ms Bina R. Pai for the Plaintiffs.

CORAM : SMT. ANUJA PRABHUDESSAI, J.

DATED: 4th APRIL, 2019.

P.C.:-

By this notice of motion, the Applicant, who is a Defendant in Suit No.947 of 1983 has sought to set aside and recall orders dated 15/2/2008 and 26/6/2009 whereby the cross examination of the Plaintiff and the evidence of the Applicant/Defendant was treated as closed.

2. Heard Ms Vasanti Dighe, the learned counsel for the Applicant/Defendant. She submits that the Defendant did not appear before the Court on 15/2/2008 as he was out of the country and his

Advocate was busy in another court. She further submits that the Applicant/Defendant could not appear on the subsequent dates as his name was wrongly recorded on the board as A.V. Bhinadini and the same was not corrected despite the order of the Court. She has also raised a grievance that the Plaintiffs were responsible for delaying the suit by filing chamber summons, notice of motion, etc. She states that the Defendant has a very good case on merits. The delay in filing the motion was due to inadvertence. She submits that the Court should take a liberal view and condone the delay in filing the notice of motion.

3. The learned counsel for the Respondent/ Plaintiff contends that the Applicant/Defendant has not made out any cause much less sufficient cause for condoning such inordinate delay. She submits that copy of the affidavit in support of documents as well as copy of the affidavit-in-evidence of the Plaintiffs and the witness was served on the Defendant. The Applicant was therefore aware of the date of hearing. She further states that even though there was a typographical error in recording the name of the Defendant as A.V. Bhinadini, the suit number as well as the name of the Advocate appearing for the Applicant/Defendant was correctly recorded. Hence, the fact that the

name of the Defendant was wrongly typed in the orders/board is no ground to recall the order. She submits that the Applicant/Defendant had appeared on 30/8/2011 and on subsequent hearings. The Applicant/Defendant was well aware that the Suit was fixed for final hearing despite which the Applicant /Defendant had not taken steps to recall the orders dated 15/6/2009 and 26/6/2009. She had relied upon the decision of the Apex Court in **Balvant Singh (Dead) vs. Jagdish Singh and Ors.(2010) 8 SCC 685**. The relevant paragraphs of the aforesaid judgment read thus:-

“25.We may state that even if the term ‘sufficient cause’ has to receive liberal construction, it must squarely fall within the concept of reasonable time and proper conduct of the concerned party. The purpose of introducing liberal construction normally is to introduce the concept of ‘reasonableness’ as it is understood in its general connotation.

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27. The application filed by the applicants lack in details. Even the averments made are not correct and ex-facie lack bona fide. The explanation has to be reasonable or plausible, so as to persuade the Court to believe that the explanation rendered is not only true, but is worthy of exercising judicial discretion in favour of the applicant. If it does not specify any of the enunciated ingredients of judicial pronouncements, then the application should be dismissed. On the other hand, if the application is bona fide and based upon true and plausible explanations, as well as reflect normal behaviour of a common prudent person on the part of the applicant, the Court would normally tilt the judicial discretion in favour of such an applicant.

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34. *Liberal construction of the expression 'sufficient cause' is intended to advance substantial justice which itself presupposes no negligence or inaction on the part of the applicant, to whom want of bona fide is imputable. There can be instances where the Court should condone the delay; equally there would be cases where the Court must exercise its discretion against the applicant for want of any of these ingredients or where it does not reflect 'sufficient cause' as understood in law. [Advanced Law Lexicon, P. Ramanatha Aiyar, 2nd Edition, 1997]"*

35. *The expression 'sufficient cause' implies the presence of legal and adequate reasons. The word 'sufficient' means adequate enough, as much as may be necessary to answer the purpose intended. It embraces no more than that which provides a plentitude which, when done, suffices to accomplish the purpose intended in the light of existing circumstances and when viewed from the reasonable standard of practical and cautious men. The sufficient cause should be such as it would persuade the Court, in exercise of its judicial discretion, to treat the delay as an excusable one. These provisions give the Courts enough power and discretion to apply a law in a meaningful manner, while assuring that the purpose of enacting such a law does not stand frustrated.*

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37. *We feel that it would be useful to make a reference to the judgment of this Court in Perumon Bhagvathy Devaswom (supra). In this case, the Court, after discussing a number of judgments of this Court as well as that of the High Courts, enunciated the principles which need to be kept in mind while dealing with applications filed under the provisions of Order 22, CPC along with an application under [Section 5, Limitation Act](#) for condonation of delay in filing the application for bringing the*

legal representatives on record. In paragraph 13 of the judgment, the Court held as under:-

"(i) The words "sufficient cause for not making the application within the period of limitation" should be understood and applied in a reasonable, pragmatic, practical and liberal manner, depending upon the facts and circumstances of the case, and the type of case. The words 'sufficient cause' in [Section 5](#) of the Limitation Act should receive a liberal construction so as to advance substantial justice, when the delay is not on account of any dilatory tactics, want of bona fides, deliberate inaction or negligence on the part of the appellant.

(ii) In considering the reasons for condonation of delay, the courts are more liberal with reference to applications for setting aside abatement, than other cases. While the court will have to keep in view that a valuable right accrues to the legal representatives of the deceased respondent when the appeal abates, it will not punish an appellant with foreclosure of the appeal, for unintended lapses. The courts tend to set aside abatement and decide the matter on merits. The courts tend to set aside abatement and decide the matter on merits, rather than terminate the appeal on the ground of abatement.

(iii) The decisive factor in condonation of delay, is not the length of delay, but sufficiency of a satisfactory explanation.

(iv) The extent or degree of leniency to be shown by a court depends on the nature of application and facts and circumstances of the case. For example, courts view delays in making applications in a pending appeal more leniently than delays in the institution of an appeal. The courts view applications relating to lawyer's lapses more leniently than applications relating to litigant's lapses. The classic example is the difference in approach of courts to applications for condonation of delay in filing an appeal and applications for condonation of delay in re-filing the

appeal after rectification of defects.

(v) Want of "diligence" or "inaction" can be attributed to an appellant only when something required to be done by him, is not done. When nothing is required to be done, courts do not expect the appellant to be diligent. Where an appeal is admitted by the High Court and is not expected to be listed for final hearing for a few years, an appellant is not expected to visit the court or his lawyer every few weeks to ascertain the position nor keep checking whether the contesting respondent is alive. He merely awaits the call or information from his counsel about the listing of the appeal.

We may also notice here that this judgment had been followed with approval by an equi-bench of this Court in the case of Katari Suryanarayana (supra).

38. Above are the principles which should control the exercise of judicial discretion vested in the Court under these provisions. The explained delay should be clearly understood in contradistinction to inordinate unexplained delay. Delay is just one of the ingredients which has to be considered by the Court. In addition to this, the Court must also take into account the conduct of the parties, bona fide reasons for condonation of delay and whether such delay could easily be avoided by the applicant acting with normal care and caution. The statutory provisions mandate that applications for condonation of delay and applications belatedly filed beyond the prescribed period of limitation for bringing the legal representatives on record, should be rejected unless sufficient cause is shown for condonation of delay. The larger benches as well as equi-benches of this Court have consistently followed these principles and have either allowed or declined to condone the delay in filing such applications. Thus, it is the requirement of law that these applications cannot be allowed as a matter of right and even in a routine manner. An applicant must essentially satisfy the above stated ingredients; then alone the Court would be inclined to condone the delay in the filing of such applications."

5. In the light of the aforestated principles, the short question which falls for consideration is whether the Applicant/Defendant has shown sufficient cause for condonation of delay.

6. The records indicate that the issues in the Suit were settled on 21/7/2007 and the additional issues were framed on 30.7.2007. The matter was listed for Plaintiff's evidence on 15.12.2008 on which date the Plaintiff filed his affidavit-in-evidence. Neither the Applicant/Defendant nor his Advocate was present on 15.12.2008, hence, this Court closed the cross-examination of the Plaintiffs and listed the matter for recording evidence of the second witness of the Plaintiffs. The Affidavit in lieu of examination-in-chief of the second witness of the Plaintiffs and the valuation report prepared by the witness were taken on record on 15/6/2009. Since the Defendant and his Advocate were not present, the cross-examination of the witness was closed. The Plaintiffs closed his evidence on the said date and the matter was adjourned to 22/6/2009 for recording evidence of the Defendant. The matter was listed for evidence on 26/6/2009 on which date the Defendant failed to remain present. The Court took note of the fact that the Defendant was absent on the previous dates of hearing

and had failed to cross-examine the Plaintiff and his witness and hence closed the evidence of the Defendant and listed the matter for arguments.

7. The records thus reveal that the Plaintiffs' evidence was closed on 15/12/2008 whereas the evidence of the Defendant was closed on 26/6/2009. These orders are sought to be recalled after a period of over six years. The defendant has sought condonation of delay on the ground that he was unable to appear before the Court on 15/12/2008 as he had gone to the U.S.A. and that his advocate was busy before another court. The Defendant has tried to justify his absence on the subsequent dates on the ground that that the clerk of the Advocate could not tress the matter as the name of the defendant wrongly shown on the board as A.B. Bhinadine.

8. The Plaintiffs have stated in the affidavit-in-reply that copies of the affidavits of the Plaintiffs and their witness were served on the Defendant well in advance. This uncontroverted statement indicates that the Defendant was duly notified that the matter was listed for evidence. The records do indicate that the name of the defendant was wrongly recorded as A.V. Bhindane on the board/orders

dated 15.6.2009, 26.6.2009 and 1.4.2010. Nevertheless, the name of the defendant was correctly recorded on the subsequent date i.e. 30.8.2011, despite which the defendant had failed to appear and the plaintiff was directed to inform the adjourned date to the defendant. The records reveal that the counsel for the Defendant had appeared in the matter on 13.9.2011, when the matter was admittedly listed for final hearing. Listing of the matter for final hearing presupposes that the evidence of the Plaintiff and the evidence of the Defendant was concluded. Thus, at least as on 13.9.2011 the defendant had knowledge of the fact that the cross-examination of the plaintiff and the evidence of the defendant was closed. The records further reveal that the Advocate for the Defendant had appeared in the matter on all subsequent dates despite which no application was filed for recall of order. The defendant has not assigned any justifiable reasons for not filing the application within a reasonable time from the date of the knowledge i.e. 13.9.2011. Suffice it to say the existence of sufficient cause is the prerequisite for exercise of discretion of condonation of delay. In the absence of such sufficient cause, the delay cannot be condoned. The facts disclosed in the present case do not disclose sufficient cause; on the contrary indicate per se negligence, which negates existence of sufficient cause.

9. In the result, the Applicant has failed to show sufficient cause for condonation of inordinate delay of 76 months. The application is therefore devoid of merits and is accordingly dismissed.

(SMT. ANUJA PRABHUDESSAI, J.)