

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

NOTICE OF MOTION NO. 1176 OF 2018
IN
NOTICE OF MOTION (L) NO. 1965 OF 2013
IN
SUIT NO. 783 OF 2012

Zeenat Iqbal Abdul Rehman	Applicant
<u>In the matter between :-</u>	
Ashok Babulal Vardhan	Plaintiff
V/s.	
Zeenat Iqbal Abdul Rehman	Defendant

Mr. Chetan Kapadia with Ms. Kausar Banatwal, Ms. Ami Brahmabhati,
I/b. Mr. Tushar Goradia for the plaintiff.
Mr. Sahil Mahajan for defendant no.1.

CORAM: SMT. ANUJA PRABHUDESSAI, J.
DATED : 27th MARCH, 2019.

ORAL JUDGMENT:

. The applicant herein has filed this Notice of Motion for the following reliefs :-

“ (a) That delay of about 782 days in taking this Notice of Motion, if any, may please be condoned.

(b) That this Hon'ble Court be pleased to restore the Notice of Motion (L) No. 1965 of 2013 and grant time for removing office objections. ”

2. Heard the learned counsel for the applicant and the learned counsel for the defendant. I have perused the records.

3. The applicant herein had entered into an agreement for sale with the respondent herein. The respondent had filed a Civil Suit No.783/2012 for specific performance of the said agreement. The said suit was disposed of by order dated 19/03/2012 as per the Consent Terms filed by the parties.

4. The applicant who was the defendant in the said suit filed a Notice of Motion (L) No.1965/2013 for setting aside the said consent terms and consent decree dated 19/03/2012. By order dated 02/03/2016, this Court had directed the applicant to remove the office objections within a period of one week from the date of the order. The applicant was to put to notice that in the event the office objections were not removed within the stipulated period, the notice of motion would stand dismissed without further reference to the Court. The applicant did not remove the office objections within one week, as a consequence thereof, the Notice of Motion came to be dismissed.

5. The applicant has filed this application for restoration of the said notice of motion with a prayer to condone the delay of 782 days. The applicant has sought to explain the inordinate delay by stating that her lawyer had instructed his clerk to remove the office objections and that

the said clerk had failed to do so. The applicant has further stated that she learnt about the dismissal only on receipt of copy of Contempt Petition. She has further stated that she is suffering from arthritis, knee problem, blood pressure, and blood sugar and as a result, she was unable to follow up the pending cases.

6. The learned counsel for the respondent/original plaintiff has vehemently opposed the application mainly on the ground that the delay is inordinate. The applicant has not been diligent, has not shown sufficient cause, and further that the action of the applicant is not bonafide. He contends that by order dated 24/10/2013 in the Notice of Motion (L) No.1965/2013 filed by the applicant herein, this Court had directed all parties including the applicant to maintain status quo in respect of the suit property. It was in the interest of the applicant to get the status quo order vacated. The applicant therefore did not remove the office objections and ensured that non-removal of office objections resulted in dismissal of notice of motion and as a consequence thereof, the status quo order was vacated. Immediately, the applicant herein executed a deed of conveyance on 16/12/2017. Relying upon the decision of the Apex Court in *Ramlal and ors. v/s. Rewa Coalfields Ltd AIR 1962 SC 361*, he contends that the delay

cannot be condoned as a matter of right and the right accrued in favour of the respondent / plaintiff cannot be taken away when the applicant / defendant failed to act diligently and to show there was sufficient cause for not filing the application within the prescribed time.

7. Before advertng to the facts, it would be appropriate to refer to the decision in *Esha Bhattacharjee vs Mg.Commit.Of Raghunathpur Nafar, (2013) 12 SCC 649*, wherein the Apex Court after considering the previous pronouncements on the issue has held thus :-

" 15. From the aforesaid authorities the principles that can broadly be culled out are:

i) There should be a liberal, pragmatic, justice-oriented, non- pedantic approach while dealing with an application for condonation of delay, for the courts are not supposed to legalise injustice but are obliged to remove injustice.

ii) The terms "sufficient cause" should be understood in their proper spirit, philosophy and purpose regard being had to the fact that these terms are basically elastic and are to be applied in proper perspective to the obtaining fact- situation.

iii) Substantial justice being paramount and pivotal the technical considerations should not be given undue and uncalled for emphasis.

iv) No presumption can be attached to deliberate causation of delay but, gross negligence on the part of the counsel or litigant is to be taken note of.

v) Lack of bona fides imputable to a party seeking condonation of delay is a significant and relevant fact.

vi) It is to be kept in mind that adherence to strict proof

should not affect public justice and cause public mischief because the courts are required to be vigilant so that in the ultimate eventuate there is no real failure of justice.

vii) The concept of liberal approach has to encapsule the conception of reasonableness and it cannot be allowed a totally unfettered free play.

viii) There is a distinction between inordinate delay and a delay of short duration or few days, for to the former doctrine of prejudice is attracted whereas to the latter it may not be attracted. That apart, the first one warrants strict approach whereas the second calls for a liberal delineation.

ix) The conduct, behaviour and attitude of a party relating to its inaction or negligence are relevant factors to be taken into consideration. It is so as the fundamental principle is that the courts are required to weigh the scale of balance of justice in respect of both parties and the said principle cannot be given a total go by in the name of liberal approach.

x) If the explanation offered is concocted or the grounds urged in the application are fanciful, the courts should be vigilant not to expose the other side unnecessarily to face such a litigation.

xi) It is to be borne in mind that no one gets away with fraud, misrepresentation or interpolation by taking recourse to the technicalities of law of limitation.

xii) The entire gamut of facts are to be carefully scrutinized and the approach should be based on the paradigm of judicial discretion which is founded on objective reasoning and not on individual perception.

xiii) The State or a public body or an entity representing a collective cause should be given some acceptable latitude.

16. To the aforesaid principles we may add some more guidelines taking note of the present day scenario. They are: -

a) An application for condonation of delay should be drafted with careful concern and not in a half hazard

manner harbouring the notion that the courts are required to condone delay on the bedrock of the principle that adjudication of a lis on merits is seminal to justice dispensation system.

b) An application for condonation of delay should not be dealt with in a routine manner on the base of individual philosophy which is basically subjective.

c) Though no precise formula can be laid down regard being had to the concept of judicial discretion, yet a conscious effort for achieving consistency and collegiality of the adjudicatory system should be made as that is the ultimate institutional motto.

d) The increasing tendency to perceive delay as a non-serious matter and, hence, lackadaisical propensity can be exhibited in a non-challant manner requires to be curbed, of course, within legal parameters. ”

8. Reverting to the facts of the present case, the applicant was the original defendant in Suit No.783 of 2012, filed by the respondent No.1 for specific performance of an agreement for sale dated 27/01/1992. The said suit was decreed as per the consent terms dated 19/03/2012. In terms of the consent decree dated 19/03/2012, the applicant/defendant was required to sell and transfer the suit property "William Compound" alongwith the structures in favour of the respondent/plaintiff.

9. The applicant filed a Notice of Motion No.1965 of 2013 to declare the consent terms and decree as well as the agreement dated

27/1/1992 as null and void. The applicant claimed that the consent terms were obtained by fraud. By ad-interim order dated 24/10/2013, in Notice of Motion (L) No. 1965 of 2013, this Court directed all parties including the applicants to maintain status quo in respect of the suit property. The said status-quo order was continued from time to time. By conditional order dated 02/03/2016 the applicant was required to remove the office objections within one week from the date of the order. The applicant did not comply with the conditional order. As a consequence thereof, by order dated 02/03/2016, Notice of Motion was dismissed.

10. The Notice of Motion to recall the dismissal order has been filed with an inordinate delay of 782 days. The applicant has sought to condone the delay mainly on the ground that her advocate had instructed his clerk to remove the office objections and that it was due to the inaction on the part of the said clerk that the Notice of Motion came to be dismissed. Apart from the bare statement of the applicant, which is otherwise not to her knowledge, there is absolutely no other material to substantiate the said contention.

11. The applicant also claims that she was unable to pursue the matter due to her illness viz. arthritis, blood pressure, and blood sugar.

The illness per se was not grave or critical as to confine the applicant to her residence for such a long period and/or to prevent her from approaching her lawyer to ascertain the status of the notice of motion. Furthermore, the applicant has not placed on record the medical records or any other material to substantiate her claim that she was incapacitated by such illness or complications arising from such illness.

12. The applicant has tried to justify the delay by alleging that she was not aware of the dismissal of the notice of motion. She claims that she had learnt about the same only on receipt of the notice in contempt petition. The conduct of the applicant raises a doubt as to the genuineness of the ground raised by the applicant. It is pertinent to note that by order dated 24/10/2013 in the Notice of Motion (L) No. 1965 of 2013, this Court had directed the parties to maintain status quo in respect of the suit property. The applicant was very well aware that as long as the status quo order was in force, she was not competent to sell the suit property and any such sale would be in breach of the status quo order. The statement of the applicant that she was not aware of the dismissal of the motion suggests that the applicant was under the belief that the status quo order was still in force. Thus the normal course in such circumstance would be to abide

by the order of status quo. The records, however, indicate otherwise. It is seen that after the Notice of Motion was dismissed and the status quo order stood vacated, the applicant entered into a deed of conveyance and sold the property to M/s. Avion Realty and Developers and two others. That the applicant had sold the property is itself an indication of the fact that the applicant was well aware that the Notice of Motion having been dismissed and the status quo order vacated, there was no embargo to sell the property. It is thus evident that taking advantage of the dismissal of the Notice of Motion resulting in the status quo order having been vacated, the applicant executed the conveyance deed. After having sold the property and having achieved the object, the applicant has sought restoration of the notice of motion. The conduct of the applicant, in my considered view, smacks of malafides.

13. The aforesaid facts and circumstances, clearly indicate that the applicant has not acted with diligence. She has not shown sufficient cause to condone the inordinate delay. Furthermore the conduct of the applicant is not bonafide. Under these circumstances, I am not inclined to exercise the discretion in favour of the applicant. In the result, the Notice of Motion is dismissed.

(SMT. ANUJA PRABHUDESSAI, J.)