

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

Basavraj
G. Patil

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Date: 2020.01.09
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Notice of Motion No.627/2019
in
Appeal (L) No.189/2019

Smt. Sheela Ram Vidhani & Anr. Applicants

Vs.

M/s. S. K. Trading Co. & Ors. Respondents

Ms. Sonali @ Ms. Spradha Sharma i/b. Solomon & Co. for the
Applicants

Ms. Urvi Shah i/b. I. R. Joshi & Co. for Respondent Nos.1 to
3.

Ms. Vedangi Tulzapurkar with Ms. Nanki Grewal i/b. Ms.
Wadia Ghandy & Co. for Respondent Nos.4 to 6.

**CORAM: K.K.TATED &
SARANG V. KOTWAL,JJ.**

DATED : JANUARY 7, 2020

P.C.

1 Heard. By this Notice of Motion, the Applicant -
Plaintiff is seeking condonation of 56 days delay in filing the
appeal challenging the order dated 14/01/2019 passed by
the learned Single Judge.

2 The learned counsel for the Applicants submits that
before filing the appeal, the Applicants took opinion from
another Advocate. In that process, there is delay in filing
the appeal. She relies on para 3 and 5 of the affidavit in
support of the Notice of Motion for condonation of delay.

She submits that in the interest of justice, this Hon'ble Court be pleased to condone the delay. She submits that if delay is not condoned, irreparable loss will be caused.

3 The learned counsel for Respondent Nos.4 to 6 has vehemently opposed the Notice of Motion. She submits that they have filed Affidavit-in-Reply dated 10.12.2019. She submits that the Applicant has failed to disclose sufficient cause for condonation of inordinate delay. She submits that the change of advocate cannot be a ground for condonation of delay. Therefore, there is no substance in the Notice of Motion. Same be dismissed with costs.

4 It is to be noted that there is delay on the part of the Applicant because the Applicant had approached another Advocate for opinion. 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.

5 Considering the submissions made by the learned counsel for the Applicant and the averments made in the affidavit in support of the Notice of Motion, we are satisfied that the Applicant has made out a case for allowing the Notice of Motion. At the same time, the Applicant has to pay cost of Rs.750/- to the advocate for Respondent Nos.4 to 6, within two weeks from today.

- 6 Hence, following order is passed:
- a. The Notice of Motion is allowed in terms of prayer clause (a), which reads thus:
“(a) That the delay of 56 days in filing the present Appeal be condoned.”
 - b. The Applicant shall pay cost of Rs.750/- to Respondent Nos.4 to 6 or their advocate within two weeks and place on record a receipt thereof, failing which the Notice of Motion shall stand dismissed without further reference to the court.
 - c. The Notice of Motion stands disposed of accordingly.

(SARANG V. KOTWAL, J.)

(K.K.TATED, J.)