

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.17/2019
IN
REVIEW PETITION (ST) NO.37226/2018
IN
WRIT PETITION NO.1275/1995

Rajaram Mohan Londhe

..... Applicant /
Petitioner

Vs.

Tatkali Devi Deosthan Wahiwatdar
& Ors.

..... Respondents

Mr. P. B. Shah a/w. K. P. Shah a/w. Avinash B. Avhad for the
Applicant / Petitioner

Mr. S. B. Deshmukh I/b. Amol Gatne for Respondent No.1B,
1C, 1D1 and 1D2

CORAM: K.K.TATED, J.

DATED : SEPTEMBER 13, 2021
(In Chamber at 2.00 pm)

P.C.

1 Heard. The learned counsel for the Applicant submits that all the Respondents are duly served and to that effect they filed Affidavit of Service. Even the office note shows the same.

2 By this application, the Applicant is seeking condonation of 1 year 159 days delay in filing the Review Petition to recall the order dated 20.07.2017 passed by this court in the Writ Petition No.1275/1995. The learned

counsel for the Applicant submits that after passing order dated 20.07.2017 by this court in the Writ Petition, they had immediately preferred Special Leave Petition No.29784/2017 in the apex court. He submits that the apex court dismissed the SLP on 23.10.2018. He submits that immediately after dismissal of the SLP, they filed the present Review Petition on 19.12.2018. He submits that in the interest of justice, this Hon'ble Court be pleased to condone the delay in filing the Review Petition and the Review Petition be heard on merits. If delay is not condoned irreparable loss will be caused.

3 On the other hand, learned counsel for Respondent No.1B, 1C, 1D1 and 1D/2 has vehemently opposed the present Civil Application. They filed their Affidavit in Reply dated 11.09.2021.

4 The learned counsel for the Respondents submits that bare reading of the application shows that the Applicant has failed and neglected to show sufficient cause for condonation of more than 1 year and 159 days delay in filing the Writ Petition. He submits that the reasons given by the Applicant is only in paragraph 3 of the application which reads thus:

"3. The Petitioner states that recently, after going through the impugned order, the petitioner realized that certain facts and circumstances of the present case and the relevant provisions of law and the Judgements referred to and relied upon were neither considered nor discussed nor there is any finding of this Hon'ble Court on the said facts and circumstances. Thus under the aforesaid facts and circumstances, the Petitioner has filed the above

Review Petition, however, there is delay in filing of the above review petition which is neither intentional nor deliberate and the same is caused due to unavoidable circumstances beyond the control of the applicant. The applicant says that the applicant has a very good case on merits and is confident to succeed in the above review petition and hence in the interest of justice, the delay caused in filing the above review petition deserves to be condoned and the review petition be decided on merits. The applicant submits that no prejudice will be caused to the respondents if the delay is condoned, however, the applicant will suffer great irreparable injustice if the delay is not condoned. Hence the present Civil Application.”

5 The learned counsel for the Respondent submits that bare reading of paragraph 3 of the application shows that the Applicant has failed and neglected to disclose sufficient cause. He submits that even this court, in the matter of State of Maharashtra & Anr. Vs. Dattu Mahadeo Markad & Anr. 2009(4) Mh.L.J.373 held that, if the Applicant fails to disclose sufficient cause, there is no question of condonation of delay. In support of this contention, the learned counsel for the Respondent relies on paragraph 5 of the said judgment which reads thus:

“5. In view of the above mentioned facts and circumstances, I am of the view that the Applicant failed to explain the sufficient cause for preferring present Civil Application after 1336 days from last date to prefer appeal in this Honourable High Court. In view of this fact, there is no substance in the present Civil Application and Civil Application is dismissed with cost of Rs.1000/-. Applicants are directed to deposit the cost of Rs.1000/- in each matter in this Court within six weeks from today. The said cost be recovered from the officer, who is responsible for delay in preferring the present appeal.

Respondents – original claimants are at liberty to withdraw the said cost.

In view of the above mentioned facts and circumstance, the present Civil Application is dismissed. The Applicant is entitled for authenticated copy of this order.”

6 On the basis of these facts, the learned counsel for the Respondents submits that there is no substance in the present Civil Application and same is liable to be dismissed with costs.

7 It is to be noted that in the present proceedings against the order dated 20.07.2017 in Writ Petition No.1275/1995, the Applicant had preferred SLP before the apex court which was dismissed on 23.10.2018. Thereafter, the Applicant filed the present Review Petition on 19.12.2018. It is to be noted that for condonation of delay, there is no question of considering the merits of the matter.

8 The Civil Application shows that immediately after dismissal of the SLP by the apex court, the Review Petition has been filed. The authority cited by the Respondent in Dattu Mahadeo Markad (supra) is not applicable in the present case. In that case, there was delay of 1336 days in filing the First Appeal. In any case, whether the Review Petition is maintainable or not, has to be decided at the time of admission and final hearing.

9 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."

10 In view of the above mentioned facts and the law laid down by the apex court, I am satisfied that the Applicant has made out a case for allowing the Civil Application.

11 Hence, the following order is passed:

- a. Delay in filing the Review Petition is condoned.
- b. The Civil Application stands disposed of accordingly.
- c. No order as to costs.
- d. The Review Petitioner to remove all Office objections in Review Petition within 4 weeks from today, failing which the Review Petition shall stand dismissed without further reference to the court.

(K.K.TATED, J.)