

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

**CIVIL APPLICATION NO.814 OF 2018
IN
SECOND APPEAL (STAMP) NO.11267 OF 2018**

Zuzya Peter Koli and Anr.

...Applicants

Versus

Mrs. Leena Victor Vaz and Ors.

...Respondents

....

Ms Neha Parte i/b. Mr. S.M. Sabrad for the Applicants.

Mr. Uday P. Warunjikar for Respondent Nos.1 to 3.

CORAM : ANIL S. KILOR, J.

DATED: 28th JANUARY, 2022.

P.C.:-

1. Heard learned counsel appearing for the respective parties.
2. Learned counsel for the Applicant pointed out that there is a delay of 145 days in filing the Second Appeal challenging the judgment and decree dated 18/08/2017 passed by the learned Ad-hoc District Judge-1, Vasai in Regular Civil Appeal No.17 of 2015.
3. It is submitted that the Applicant No.1 is a senior citizen and his age is more than 72 years. As the certified copy was misplaced, it took some time for the Applicant No.1 to trace out the same and therefore he

had to apply again for the certified copy, which was delivered on 03/04/2018. It is submitted that the time consumed in all this exercise, is the cause for delay. It is submitted that no dilatory tactics are there but it is bonafide and therefore it is prayed that same may be condoned.

4. Mr. Warunjikar, learned counsel for the Respondents strongly opposed the application it is submitted that as the delay has not been explained properly, this Court may reject the application for condonation of delay.

5. In the case of ***N. Balakrishnan vs M. Krishnamurthy, (1998) 9 SCC 143***, the Hon'ble Supreme Court of India has held 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. The law of limitation fixes a lifespan for such legal remedy for the redress of the legal injury so suffered. Time is precious and wasted time would never revisit. During the efflux of time newer causes would sprout up necessitating newer persons to seek legal remedy by approaching the courts. So a lifespan must be fixed for each remedy. Unending period for launching the remedy may lead to unending uncertainty and consequential anarchy. The 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 rights

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 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 Vs. Kuntal Kumari [AIR 1969 SC 575] and State of West Bengal Vs. 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 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."

6. In the teeth of above referred principles of law, I revert back to the facts of the present case. In the present matter undisputedly Applicant

No.1 is a senior citizen and he is in his advanced age. The Applicants have offered sufficient explanation by pointing out that the certified copy of the judgment and decree was misplaced and the Applicants took some time to trace out the copy and supply the same to their Advocate.

7. In the circumstances, I do not find that the Applicants have resorted to any dilatory tactics in this matter. Moreover, the explanation offered by the Applicants does not smack malafides. If the delay is refused to condone in this case, it would result in foreclosing the Applicants from putting forth their cause. Accordingly, I pass the following order:-

ORDER

- (i) The application for condonation of delay is allowed;
- (ii) The delay caused in filing Second Appeal is condoned.

The office is requested to register the Second Appeal and place the same before the Court for admission.

(ANIL S. KILOR, J.)

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