

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

**CIVIL APPLICATION NO.1610 OF 2017
IN
FIRST APPEAL (STAMP) NO.33471 OF 2016**

Manekben Kanjibhai Tandel

...Applicant

Versus

Mangiben Dayalbhai Patel (since dead)

...Respondents

2. Shantubhai Dayalbhai Patel and Ors.

....

Mr. Ralston Fernandes for the Applicant.

CORAM : ANIL S. KILOR, J.

DATED: 28th JANUARY, 2022.

P.C.:-

1. Heard Mr. Fernandes, learned counsel appearing for the Applicant. None for the Respondents, though served.

2. Mr. Fernandes submits that there is a delay of 173 days in filing the First Appeal challenging the judgment and decree dated 28/01/2016 passed by the learned Civil Judge, Senior Division, at Daman in Specific Civil Suit No. 09 of 2009. It is submitted that the delay has been explained in the application and the same is not intentional and no dilatory tactics have been adopted in this matter while filing the appeal.

3. After considering the reasons stated in the application, more particularly in paragraph 2 onwards, I am of the opinion that sufficient cause has been shown for condonation of delay. Respondent Nos.2 and 3 have filed reply opposing the application.

4. 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."

5. In view of the above referred well settled position of law, the reasons stated in this application are sufficient for condonation of delay.

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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