

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.3026 OF 2022

Manjiri Neelkanth Karandikar ...Petitioner
vs.
Neelkanth Gopalrao Karndikar and Another ...Respondents

Ms. Aishwarya Shinde a/w. Mr. Pradeep Salgar, for the Petitioner.
Ms. Chandana Salgaonkar, for the Respondents.

CORAM : N. J. JAMADAR, J.
DATE : JULY 20, 2023

P.C.:

1. Heard the learned counsel for the parties.
2. The challenge in this petition is to an order dated 5th January, 2022 passed by the learned Member, Maharashtra State Co-Operative Appellate Court, at Pune in Misc. Application No. 56 of 2021 whereby the learned Member was persuaded to allow the application preferred by respondent No. 1 for condonation of delay in preferring the appeal against ex-parte judgment in Dispute No. 37 of 2011 whereunder the dispute was allowed and the respondent No. 1/ Opponent No. 1 came to be permanently restrained from transferring in any manner by way of sale, gift, lease, exchange or mortgage the suit flat without the consent of the disputant /petitioner and respondent No. 2/ opponent No. 2 society came to be

restrained from issuing no objection certificate to the respondent No. 1 for transfer or sale of the suit flat.

3. The petitioner had filed the dispute with the assertion that respondent/ opponent No.1 is her husband. The consideration for the acquisition of the suit flat was jointly paid by disputant, respondent No. 1 and the father of respondent No. 1. The disputant and respondent No. 1 were shown as the joint purchasers of the subject flat. Respondent No. 1 having incurred huge financial liabilities was intending to dispose of the suit flat without the consent of the petitioner and therefore it was necessary to restrain the respondent No. 1 from alienating or otherwise creating third party rights in the subject flat.

4. Initially, the petitioner had prayed for temporary injunction. By an order dated 26th December, 2012, the application (Exhibit 5) came to be rejected. The petitioner did not succeed in an appeal preferred against the said order. The petitioner had also filed an application before the Joint Registrar, Co-Operative Societies for declaration of co-membership of respondent No. 2 society. Respondent No. 1 claimed as simultaneous proceedings were being prosecuted by the petitioner, he could not pay attention to the

dispute pending before the Cooperative Court and eventually the dispute came to be allowed ex parte. Respondent No. 1 claimed that he became aware of the passing of the ex parte decree in Dispute No. 37 of 2011 only when he was served with the summons in the Sp. C.S. No. 764 of 2021.

5. The respondent No. 1 thus preferred an appeal along with application for condonation of delay asserting that the respondent No. 1 on account of simultaneous proceedings and professional commitments could not appear before the Cooperative Court and was unaware of passing of the ex parte decree in Dispute No. 37 of 2011.

6. The petitioner resisted the application for condonation of delay.

7. By the impugned order, the learned Member, Cooperative Court was impelled to allow the application holding, inter alia, that an application for condonation of delay, in view of settled legal position, was required to be liberally construed and, in the facts of the case, the respondent No. 1 had made out a sufficient cause for condonation of delay. The reasons ascribed by respondent No. 1 on

account of simultaneous proceedings being underway before the authorities and the professional commitments, especially in the context of Covid 19 pandemic, constituted a sufficient cause. The application thus came to be allowed subject to payment of costs of Rs. 10,000/- by respondent No. 1 to the petitioner.

8. Being aggrieved, the petitioner has invoked the writ jurisdiction.

9. Ms. Shinde, the learned counsel for the petitioner submitted that the learned Member, Cooperative Appellate Court committed an error in exercising the discretion to condone the delay. No cause, much less sufficient, was assigned by respondent No. 1. There was huge delay of 1095 days in preferring the appeal. Such huge delay could not have been condoned in a light manner.

10. The learned counsel for the petitioner placed reliance on the decision of the Supreme Court in the case of **Majji Sannemma @ Sanyasirao vs. Reddy Sridevi and Others**¹ wherein the Supreme Court, after referring to the previous pronouncements, has enunciated that the delay in preferring an appeal cannot be condoned as a matter of course and the Court was enjoined to

1 2021 SCC OnLine SC 1260.

evaluate sufficiency of the cause ascribed for the delay. The observations of the Supreme Court in paragraph 7 read as under:-

7] At this stage, a few decisions of this Court on delay in filing the appeal are referred to and considered as under:

7.1 In the case of **Ramlal, Motilal and Chhotelal** (supra), it is observed and held as under:

In construing s. 5 it is relevant to bear in mind two important considerations. The first consideration is that the expiration of the period of limitation prescribed for making an appeal gives rise to a right in favour of the decree-holder to treat the decree as binding between the parties. In other words, when the period of limitation prescribed has expired the decreeholder has obtained a benefit under the law of limitation to treat the decree as beyond challenge, and this legal right which has accrued to the decreeholder by lapse of time should not be lightly disturbed. The other consideration which cannot be ignored is that if sufficient cause for excusing delay is shown discretion is given to the Court to condone delay and admit the appeal. This discretion has been deliberately conferred on the Court in order that judicial power and discretion in that behalf should be exercised to advance substantial justice. As has been observed by the Madras High Court in **Krishna v. Chattappan**, (1890) J.L.R. 13 Mad. 269, "s. 5 gives the Court a discretion which in respect of jurisdiction is to be exercised in the way in which judicial power and discretion ought to be exercised upon principles which are well understood; the words 'sufficient cause' receiving a liberal construction so as to advance substantial justice when no negligence nor inaction nor want of bona fide is imputable to the appellant."

7.2 In the case of **P.K. Ramachandran** (supra), while refusing to condone the delay of 565 days, it is observed that in the absence of reasonable, satisfactory or even appropriate explanation for seeking condonation of delay, the same is not to be condoned lightly. It is further observed that the law of limitation may harshly affect a particular party but it has to be applied with all its rigour when the statute so prescribes and the courts have no power to extend the period of limitation on equitable grounds. It is further observed that while exercising discretion for condoning the delay, the court

has to exercise discretion judiciously.

7.3 In the case of **Pundlik Jalam Patil** (supra), it is observed as under:

“The laws of limitation are founded on public policy. Statutes of limitation are sometimes described as “statutes of peace”. An unlimited and perpetual threat of limitation creates insecurity and uncertainty; some kind of limitation is essential for public order. The principle is based on the maxim “interest reipublicae ut sit finis litium”, that is, the interest of the State requires that there should be end to litigation but at the same time laws of limitation are a means to ensure private justice suppressing fraud and perjury, quickening diligence and preventing oppression. The object for fixing time limit for litigation is based on public policy fixing a lifespan for legal remedy for the purpose of general welfare. They are meant to see that the parties do not resort to dilatory tactics but avail their legal remedies promptly. Salmond in his Jurisprudence states that the laws come to the assistance of the vigilant and not of the sleepy.”

7.4 In the case of **Basawaraj** (supra), it is observed and held by this Court that the discretion to condone the delay has to be exercised judiciously based on facts and circumstances of each case. It is further observed that the expression “sufficient cause” cannot be liberally interpreted if negligence, inaction or lack of bona fides is attributed to the party. It is further observed that even though limitation may harshly affect rights of a party but it has to be applied with all its rigour when prescribed by statute. It is further observed that in case a party has acted with negligence, lack of bona fides or there is inaction then there cannot be any justified ground for condoning the delay even by imposing conditions. It is observed that each application for condonation of delay has to be decided within the framework laid down by this Court. It is further observed that if courts start condoning delay where no sufficient cause is made out by imposing conditions then that would amount to violation of statutory principles and showing utter disregard to legislature.

7.5 In the case of **Pundlik Jalam Patil** (supra), it is observed by this Court that the court cannot enquire into belated and stale claims on the ground of equity. Delay defeats equity. The Courts help those who are vigilant and “do not slumber over their rights”.

11. In opposition to this, Ms. Salgaonkar the learned counsel for respondent No. 1 submitted that the dispute before the Cooperative Court, after the application for temporary injunction and appeal were dismissed, proceeded without any intimation or notice to respondent No. 1. The learned Judge, Cooperative Court disposed of the dispute in a matter of three days. Attention of the Court was invited to the relevant entries in the roznama of the proceedings before the Cooperative Court. It was further submitted that the respondent No. 1 being a professional Cardiologist was prevented by a sufficient cause from filing an appeal and the situation became critical after Covid 19 pandemic broke out. In the circumstances, learned Member, appellate Court committed no error in the exercise of discretion.

12. When a superior or revisional court is called upon to examine the correctness of the exercise of discretion by the lower authority in the matter of condonation of delay, different consideration come into play where the lower authority has condoned the delay and in cases where it has declined to exercise the discretion.

13. This distinction in the approach is premised on an overarching principle that ordinarily an application for condonation of delay should receive liberal consideration. Generally, the courts and tribunals lean in favour of condonation of delay so as to

advance the cause of substantive justice by promoting the determination of a lis on merits rather than on technicalities. Undoubtedly, there is an equally compelling public policy in prescribing the period of limitation. However, where the authority is invested with jurisdiction to condone the delay, exercise of such discretion is often informed by liberal considerations.

14. Consistent with the aforesaid approach, where the delay is condoned by a lower court or authority by accepting the cause assigned by a party as sufficient, normally superior court ought not disturb the said finding, unless the exercise of discretion suffers from the vice of manifest arbitrariness or perversity. On the other hand, when the court / authority at the first instance refuses to condone the delay, the superior court would be within its rights in examining the cause assigned for the delay and draw its own conclusion.

15. The aforesaid position in law was enunciated by the Supreme Court in the case of N. Balakrishnan V/s. M. Krishnamurthy², wherein the Supreme Court observed, inter alia, as under :

“9. It is axiomatic that condonation of delay is a matter of discretion of the court. Section 5 of the Limitation Act does not say that such discretion can be exercised only if the delay is within a certain limit. Length of delay is no matter, acceptability of the explanation is the only

2 (1998) 7 SCC 123

criterion. Sometimes delay of the shortest range may be uncontainable due to want of acceptable explanation whereas in certain other cases delay of very long range can be condoned as the explanation thereof is satisfactory. Once the court accepts the explanation as sufficient it is the result of positive exercise of discretion and normally the superior court should not disturb such finding, much less in regional jurisdiction, unless the exercise of discretion was on wholly untenable grounds or arbitrary or perverse. But it is a different matter when the first court refuses to condone the delay. In such cases, the superior court would be free to consider the cause shown for the delay afresh and it is open to such superior court to come to its own finding even untrammelled by the conclusion of the lower court.

10. The reason for such a different stance is thus: The primary function of a court is to adjudicate the dispute between the parties and to advance substantial justice. Time limit fixed for approaching the court in different situations is not because on the expiry of such time a bad cause would transform into a good cause.

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 Mum (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 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].”

16. The aforesaid pronouncement was followed by the Supreme Court in the case of **B.T.Purushothama Rai V/s. K.G.Uthaya and Ors.**³ The observations in paragraph No.17 read as under :

“17. On the question of limitation and delay this Court in *N. Balakrishnan V/s. M. Krishnamurthy* (supra) held that the purpose of the Limitation Act was not to destroy the rights. It is founded on the

3 (2011) 14 SCC 86

public policy fixing the life span for legal remedy for the general welfare. The primary function of a court is to adjudicate between the parties and to advance substantial justice. The object of providing legal remedy is to repair the damage caused as a result of legal injury. If the explanation given does not smack of mala fides or is not shown to have been put forth as a part of a dilatory strategy, the court must show utmost consideration to the suitor.”

17. In the case at hand, the learned Member, appellate Court has exercised the discretion to condone the delay. First and foremost it is pertinent to note that the perusal of the roznama before the Cooperative Court in Dispute No.37 of 2011 indicates that on 18th August, 2018 the matter was posted for arguments/judgment. None appeared for the respondent No. 1 on that day. Since no arguments were advanced on behalf of the disputant, the matter came to be posted on 20th August, 2018. On that day, the arguments were heard and interestingly the Court granted an ex parte injunction and posted the matter for judgment. On the following day i.e. on 21st August, 2018, the judgment was delivered.

18. It is in the light of the aforesaid record and proceedings, the claim of respondent No. 1 that he was unaware of the passing of the ex parte judgment deserves to be considered. Indisputably, the

respondent No. 1 is professional cardiologist. In the application the respondent No. 1 has assigned reasons as to why the appeal could not be preferred within the stipulated period. The learned Member, appellate Court has found the cause assigned by the respondent No. 1 to be justifiable. This Court in exercise of the writ jurisdiction does not find any ground to interfere with the exercise of discretion, which promotes the cause of substantive justice.

Hence, the following order.

ORDER

The petition stands dismissed.

(N. J. JAMADAR, J.)