

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

**INTERIM APPLICATION NO.3402 OF 2023
IN
FIRST APPEAL STAMP NO.7255 OF 2023**

Punjab National Bank, Mumbai ..Applicant/Appellant
Versus
M/s. Mohan Gandhi & Company ..Respondent

Dr. Birendra Saraf, Advocate General a/w Vaibhav Ghogre & Jinelle Gogri i/by Negandhi Shah and Himayatulla, for the Applicant/Appellant.
Mr. Prasad Pathare, for the Respondent.

CORAM : KISHORE C. SANT, J.

DATE : 6th FEBRUARY, 2024

PC.

1. Heard parties on Application for condonation of delay.
2. Learned Advocate General argued that sufficient cause is shown in the Application to condone delay. It is the case of the Applicant/Appellant that after getting knowledge of the impugned judgment and order dated 6th January, 2023, on 7th February, 2023, the competent authority granted permission to file Appeal. Thereafter the certified copy was applied and the same was received on 8th March, 2023 which was made available on 9th March, 2023. The party was under impression that the limitation for filing an Appeal is 90 days as per Article 116 of the Limitation Act.

Considering Article 116, the limitation was till 6th April, 2023, whereas the Appeal is filed on 30th March, 2023 without filing any separate Application for condonation of delay. However, the office of this Court raised an objection that there is delay of 36 days. It is thereafter the Application was filed on 27th March, 2023. It is thus submitted that there is sufficient case shown to condone the delay.

3. Learned advocate for the Respondent vehemently opposes the Application stating that the delay caused is not bonafide. The same Applicant/Appellant has filed another Appeal in time considering the limitation as under Section 15 of the City Civil Court Act and not under the Limitation Act. The Permission was even granted on 7th February, 2023, however, letter granting permission is not placed on record and thus, there is suppression of material fact. He relies upon following judgments in support of his submissions :-

- i) **Ramlal & Ors. Vs. Rewa Coalfields Ltd.**¹
- ii) **The State of W.B. Vs. The Administrator, Howrah Municipality & Ors.**²
- iii) **Union of India & Anr. Vs. Shree Ram Kanwar & Ors.**³
- iv) **Binod Bihari Singh Vs. Union of India**⁴
- v) **Smt. Madhuribai Vs. Grasim Industries Ltd.**⁵

4. Section 5 gives discretion to the Court in the matter of

1 AIR 1962 SC 361.

2 AIR 1972 SC 749.

3 AIR 1958 Punjab 365.

4 AIR 1993 SC 1245.

5 AIR 1995 Madhya Pradesh 160.

condonation of delay, it is therefore for the Court to consider the facts of each case and to exercise discretion. There is no absolute rule either to condone the delay or not to condone the delay, as the matter is mostly of a discretion, though based on the judicious considerations. In this case, the fact that the Appeal was filed without application for condonation of delay also needs to be considered. From the facts of this case, it can be gathered that the Applicant/Appellant had bonafide filed an Appeal considering the limitation period as 90 day provided under Article 116 of the Limitation Act. It is only upon raising objection by the office, Applicant realized that there is delay. So far as filing of another Appeal within limitation time is concerned, this Court finds that the party can file an Appeal any time before limitation period. The fact of filing another Appeal within limitation period is thus of not of any consequence. Filing another Appeal after few days cannot be considered to be deliberate act on the part of the Applicant in not filing of present Appeal along with that Appeal. Considering the above and since the delay is hardly of 36 days, this Court is inclined to allow the Application.

5. The Application for condonation of delay is thus allowed.

[KISHORE C. SANT, J.]