

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

**INTERIM APPLICATION NO.20333 OF 2022
IN
CIVIL REVISION APPLICATION (ST.) NO.18269 OF 2022
WITH
CIVIL REVISION APPLICATION (ST.) NO.18269 OF 2022**

SHRI. BARKAT PHIDAHUSEN SOHIL AND ORS.)...APPLICANTS

V/s.

MILIND CHANDRASHEKHAR MODAK AND ORS.)...RESPONDENTS

Mr.Surel Shah a/w. Mr.Sachin Gite, Advocate for the Applicants.

Mr.P.J.Thorat a/w. Ms.Nazia Sheikh i/by Ms.Aditi S. Naikare, Advocate
for the Respondents No.1, 4 and 5A to 5C.

CORAM : ABHAY AHUJA, J.

**RESERVED ON : 20th JULY 2023
PRONOUNCED ON : 10th JANUARY 2024**

JUDGMENT :

1. This Interim Application seeks condonation of delay of 2 years and 227 days caused in filing the Civil Revision Application against the judgment and order dated 31st July 2019 passed by the Principal District Judge, Nashik in Regular Civil Appeal No.85 of 2013 whereby the Appeal filed by the Applicants was dismissed and judgment and order dated 1st January 2013 passed by the Civil Judge, Senior Division, Nashik in Regular Civil Suit No.86 of 1997 was confirmed. The Trial

Court had directed the Applicants to put the Respondents in possession of the Suit property and also to pay arrears of Rs.7880/- to the Respondents. The impugned judgment and order in the Civil Appeal was passed on 31st July 2019. The Applicants made an application for certified copy on 1st August 2019 and received it on 31st August 2019.

2. It is the case of the Applicants that amongst the Applicants, the Applicant no.1 is an old person and was 83 years old at the relevant time and that he was not keeping well and suffering from age related issues and therefore, after receipt of the certified copy of the impugned judgment and order, could not immediately consult their Advocate for taking appropriate action against the impugned judgment and order. That, all the Applicants are senior citizens and have crossed the age of 70 years. That, therefore, it was difficult for all the Applicants to take decision in respect of the present matter. That, some of the Applicants were also consulting and taking opinion of some Advocates in respect of the subject matter, but in the meantime, due to the outbreak of Covid-19 pandemic, the Applicants could not take any steps for filing the appropriate proceedings. That, thereafter, it became difficult for the Applicants to approach the Advocate and come to Mumbai to take out appropriate proceedings against the impugned judgment and order. It

is submitted that the Applicants were also informed that during that period, the Courts were also not functioning and the Applicants would get benefit of this pandemic period for the delay caused in filing the present proceedings and hence, during the said time, the Applicants could not file any proceedings.

3. It is submitted that in the meanwhile, original copy of impugned judgment and order also got misplaced by the Applicants and the Applicants only had xerox copies. That, after the Covid-19 pandemic got better around April 2022, the Applicants decided to file appropriate proceedings to challenge the impugned judgment and order. In furtherance thereof, the Applicants again met some Advocates and decided to file proceedings before the Bombay High Court. However, again due to the age and health related issues of the Applicant no.1, some more delay was caused. It is the case of the Applicants that they were thereafter informed that for filing proceedings before the Bombay High Court, the Applicants would have to give certified copies of the impugned judgment and order. Therefore, the Applicants filed a fresh application for getting certified copies on 25th June 2022. That, the Applicants received the fresh certified copies on 5th July 2022. It is submitted that the Applicants have thereafter immediately filed the

Civil Revision Application along with this Application for condonation of delay on 26th July 2022. Mr.Surel Shah, learned Counsel for the Applicants, submits that the delay caused in filing the Civil Revision Application is not intentional and deliberate and the same has been caused due to the facts and circumstances elaborated in the Application, particularly, due to the state of the health of the Applicant no.1. Learned Counsel would submit that the Applicants have a very good case on merits and are likely to succeed. That, no prejudice would be caused to the Respondents, if the delay in filing the Civil Revision Application is condoned, whereas the Applicants would suffer great prejudice if the delay is not condoned. Mr.Surel Shah would submit that when consideration of an appeal on merits is pitted against the rejection of a meritorious claim on the technical ground of the bar of limitation, the Courts lean towards consideration on merits by adopting a liberal approach towards sufficient cause to condone the delay and this Court may also adopt the liberal approach to the delay caused in filing the Civil Revision Application as the Applicants have a good case on merits. Mr.Surel Shah has relied upon the decision of the Hon'ble Supreme Court in the case of *State of Uttar Pradesh & Others vs. M/s. Satish Chand Shivhare and Brothers*¹ in support of his

¹ SLP (CIVIL) NO.5301 OF 2022

contention. Learned Counsel would also submit that sufficient cause is a relative fact dependent on the facts and circumstances of each case and as long as the Applicants display bonafides, have not been negligent and the delay occasioned is not such that condoning it would seriously prejudice the other party, then the Court should condone the delay. Mr.Surel Shah also relies upon the the decision of the Hon'ble Supreme Court in the case of *Sridevi Datla vs. Union of India and Others*². He therefore submits that the delay in filing the Civil Revision Application be condoned and the Civil Revision Application be heard.

4. On the other hand, Mr.Pradeep Thorat, learned Counsel for the Respondents, at the outset, would submit that the Interim Application is misconceived and no sufficient cause has been made out for condonation of delay. That, the reasons for the same are vague and do not constitute sufficient cause.

5. Mr.Thorat would submit that the Applicants were aware that the decree was passed by the Principal District Judge and although the certified copies were obtained immediately on 14th August 2019, the Applicants had preferred not to challenge the same within the

2 (2021) 5 Supreme Court Cases 321

prescribed period of limitation, and therefore, the said Interim Application ought to be dismissed with compensatory costs.

6. Learned Counsel would submit that the submissions with respect to the ill-health of the Applicant no.1 and that therefore they could not consult the Advocate are completely denied. Mr.Thorat would submit that the other submissions made on behalf of the Applicants have been denied in the reply that has been filed on behalf of the Respondents. That, no sufficient cause has been made out for condonation of delay. The Applicants have only adopted these tactics to delay execution of the decree. The reason of outbreak of Covid-19 pandemic cannot be accepted as the impugned judgment and order is of July 2019 which is much prior to the outbreak of the Covid-19 pandemic. That, the old age of the Applicant no.1 cannot be a justification especially when there are four Applicants. That, there is a huge delay of about three years and the only explanation given is old age and health issue of Applicant no.1. That, there is no supporting document to show that the Applicant no.1 was suffering from any illness and that the Applicants have only given vague reasons for the delay caused which would not constitute sufficient cause.

7. It is submitted that the Applicants have deliberately filed fresh application for obtaining certified copies only to justify the delay caused in filing the present proceedings. That, the Applicants were not diligent in filing the present proceedings and do not deserve any equitable relief from this Court.

8. Mr.Thorat would submit that the Suit for eviction was filed in 1997 on the ground of non-user, arrears of rent and unlawful sub-letting. That, the Applicants have parted with possession of the Suit premises without the consent of the landlord and have acquired alternate premises. That, the judgment and decree dated 1st January 2013 in the Suit for eviction directed the Applicants to hand over possession of the Suit premises. That the said judgment and decree was challenged in appeal which appeal has been dismissed by the impugned judgment and order dated 31st July 2019. That, although the Respondents have filed proceedings in the year 1997 and although they have obtained decree of eviction in the year 2013, they have been deprived of the fruits of the decree. That both the lower Courts have held that the Applicants have unlawfully sub-let the Suit premises and they are not in possession of the Suit premises. Mr.Thorat would

submit that the present Civil Revision Application is yet another attempt to obstruct the Respondents-landlords from obtaining possession of the Suit premises and in the facts and circumstances of the case, do not deserve any equitable reliefs as they have not approached this Court with clean hands making false and vague statements for seeking condonation of delay. Mr.Thorat would submit that the delay is deliberate and intentional and cannot be condoned. That, the Applicants have no case on merits and the condonation of delay may not serve any purpose. That, the Applicants have made false and contradictory submissions and no sufficient cause has been made out . Mr.Thorat has relied upon the decisions of the Hon'ble Supreme Court in the case of *Ajay Dabra vs. Pyare Ram and Others*³ and in the case of *Maji Sannemma alias Sanyasirao vs. Reddy Sridevi and Others*⁴ in support of his contentions. Learned Counsel submits that, therefore, the application for condonation of delay be dismissed.

9. Learned Counsel has also distinguished the decisions cited on behalf of the Applicants submitting that the two decisions are completely distinguishable on facts.

3 2023 SCC Online SC 92

4 2021 SCC Online SC 1260

10. I have heard the learned Counsel and considered the rival contentions.

11. It is not in dispute that the impugned judgment and order had been passed on 31st July 2019. That, the application for certified copy was made on 1st August 2019 and the same was received on 31st August 2019. The time to file the Civil Revision Application is ninety days from the date of the order. That means the Civil Revision Application ought to have been filed by 90th day which ended on 29th November 2019. The Covid-19 exclusion of limitation period as per the Suo Motu Writ Petition (C) No.3 of 2020 was between 15th March 2020 till 28th February 2022. The period of limitation has expired on 29th November 2019 which is prior to 15th March 2020. Therefore, in my view, the suo motu order of the Hon'ble Supreme Court and the period of Covid-19 limitation excluded by the said order would not be available to the Applicants as the period of limitation has expired much prior to the Covid-19 exclusion period.

12. It has been pleaded that the Applicant no.1 was an old person and not keeping well and even the other Applicants were senior citizens, who although were consulting Advocates with respect to the

subject matter of the Civil Revision Application but were not able to take any decision. That, thereafter, the Covid-19 pandemic situation broke out and the Applicants could not take any steps for filing appropriate proceedings and it became difficult for them to approach the Advocates and come to Mumbai as they were informed that the Courts were also not functioning and that they would get benefit of the pandemic period for the period of delay. However, no medical certificates or reports or supporting documents have been annexed or furnished demonstrating these claims of the Applicants due to which they were unable to file the revision application in time. The submissions are bald without any substantiation without details or particulars or supporting documents. The submissions, therefore, do not inspire any confidence.

13. It has also been submitted that the original copies of the impugned judgment and order got misplaced during the period and that when they approached the Advocate, they were informed that they had to give certified copies, and therefore, fresh application was made. In my view, this explanation also does not inspire any confidence and has been made in a casual manner without any substantiation as the Applicants had already handled the litigations at two stages. The Suit

for eviction has been filed in the year 1997. Since the judgment and order dated 1st January 2013 decreed the said Suit and the Applicants were directed to hand over possession and the Appellate Court also confirmed the decree for eviction in July 2019, it cannot be believed that the Applicants were not in a position to take appropriate advice from Advocates whether or not to file the Civil Revision Application. In any event, the period of limitation had already expired on 29th November 2019. In fact going by the facts, the Applicants can be said to have been inactive and not acted diligently and rather lackadaisical and negligent as despite receiving the certified copy on 31st August 2019, firstly did not avail of their remedies in time and then purportedly misplaced the certified copy and then tried to justify preferring fresh application for certified copy on the purported ground that they were told that certified copy was required, as if they were not aware that certified copy was required for filing the civil revision application.

14. The reasons proffered by the Applicants are hardly plausible. I agree with the submissions made on behalf of the learned Counsel for the Respondents that despite having filed proceedings in the year 1997 and having obtained the decree of eviction in the year 2013, the

Respondents are being deprived of the fruits of their decree, considering that both the lower Courts have held that the Applicants had unlawfully sublet the Suit premises and they were not possessed of the Suit premises. The delay is of a long duration of 2 years and 227 days, which is nothing short of being described as inordinate and no sufficient or reasonable cause has been made out explaining this delay. Condoning the delay would therefore seriously prejudice the Respondents. There is no sufficient cause made out in explaining the delay caused in filing the civil revision application. Moreover there are concurrent findings on merits by two Courts. The Applicants had parted with possession of the Suit premises without the consent of the landlord and also acquired alternate premises. These findings of the Trial Court have been arrived at after considering the evidence on record which has been upheld by the Appellate Court. The Suit for eviction was decreed by the Trial Court on 1st January 2013 which has been upheld by the Appellate Court on 31st July 2019. In my view, considering the findings on merits by the two Courts, it cannot be said that the claim of the Applicants is meritorious.

15. The decision in the case of *Sridevi Datla vs. Union of India and Others (supra)*, and *State of Uttar Pradesh & Others vs. M/s. Satish*

Chand Shivhare and Brothers (supra) relied upon by Mr.Surel Shah would not assist the case of the Applicants.

16. In the case of *Sridevi Datla vs. Union of India and Others (supra)*, paragraph 28 thereof clearly records that the applicant must display *bona fides*, should not have been negligent, and the delay occasioned should not be such that condoning it would seriously prejudice the other party. As noted above, the Applicants have been negligent, because of which, the delay has occasioned. Though the certified copies of the judgment dated 31st July, 2019 were obtained on 14th August 2019, the Applicants did not prefer to challenge the same within the prescribed period of limitation. The reason of outbreak of Covid-19 pandemic cannot be accepted as the impugned judgment and order is of July 2019 which is much prior to the outbreak of the Covid-19 pandemic. Also the reason that the delay was because of the old age of the Applicants or the Applicant no.1 and his age related health issues cannot be believed as no document in support thereof has been produced to show that the Applicant no.1 or any of the Applicants were suffering from any illness which prevented them from availing of their remedies in time. The Applicants have given vague and flimsy reasons for the delay caused which do not constitute sufficient cause. Having noted

as above, in my view, condoning the delay would seriously prejudice the Respondents. Therefore, the said case would not assist the case of the Applicants.

17. In the case of *State of Uttar Pradesh & Others vs. M/s. Satish Chand Shivhare and Brothers (supra)*, the Hon'ble Supreme Court has in paragraph 22 observed that when consideration of an appeal on merits is pitted against the rejection of a meritorious claim on a technical ground of the bar of limitation, the Courts lean towards consideration on merits by adopting a liberal approach towards sufficient cause to condone the delay and a liberal approach must be adopted when some plausible cause for delay is shown. That liberal approach does not mean that an appeal should be allowed even if the cause for delay shown is flimsy. The Court should not waive limitation for all practical purposes by condoning inordinate delay caused by a tardy and lackadaisical manner of functioning. In the facts of the present case, as observed, there does not appear to be any merit in the claim of the Applicants in the face of the two concurrent decisions based on evidence. Moreover, it must be remembered that this is a revision application and the matter before the Hon'ble Supreme Court was an appeal. In an appeal the evidence can be re-appreciated

whereas in a revision application unless there is illegality or failure to exercise jurisdiction or an exercise of jurisdiction illegally or with material irregularity, the Courts cannot exercise revisional powers. In the case at hand, two Courts have found on the basis of evidence that the Applicants had unlawfully sublet the Suit premises and they were not in possession of the Suit premises. Therefore, there would be no question of the claim of the Applicants being meritorious. Infact, as noted above, no plausible cause for delay is shown. The cause for delay is flimsy. The conduct of the Applicants is not only negligent but also tardy and lackadaisical and therefore going by the decision of the Hon'ble Supreme Court in the case of *State of Uttar Pradesh & Others vs. M/s. Satish Chand Shivhare and Brothers (supra)* this Court cannot waive the limitation by condoning the said inordinate delay caused by tardy, lackadaisical and negligent manner of functioning of the Applicants. The said decision, therefore, does not lend any assistance to the case of the Applicants.

18. I agree with Mr.Thorat on his reliance upon the decision in the case of *Majji Sannemma alias Sanyasirao vs. Reddy Sridevi and Others (supra)*. Paragraphs 17, 18, 19, 20 and 21 thereof are relevant and usefully quoted as under :

“17. 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 decree-holder 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 decree-holder by lapse of time should not be lightly - heartedly 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."

18. 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.

19. 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.”

20. 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.

21. 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”.

19. Mr.Thorat has also relied on the decision of the Hon'ble Supreme Court in the case of *Ajay Dabra vs. Pyare Ram and Others (supra)* where the Hon'ble Supreme Court while considering the case of a delay of 254 days has in paragraphs 11, 12, 13 and 14 reiterated that where in a case a party is found to be negligent or for want of *bona-fide* on his part in the facts and circumstances of the case or found to have not acted diligently or remained inactive, there cannot be a justified ground to condone the delay and that no Court could be justified in condoning such an inordinate delay by imposing any condition whatsoever. That the application is to be decided only within the parameters laid down by the Hon'ble Supreme Court with regard to condonation of delay. That in case there is no sufficient cause to prevent a litigant to approach the Court in time, condoning the delay without justification, putting any condition whatsoever, amounts to passing an order in

violation of the statutory provisions and it tantamounts to showing utter disregard to the legislature. The said paragraphs are usefully quoted as under :

“11. We do not have a case at hand where the appellant is not capable of purchasing the court fee. He did pay the court fee ultimately, though belatedly. But then, under the facts and circumstances of the case, the reasons assigned for the delay in filing the appeal cannot be a valid reason for condonation of the delay, since the appellant could have filed the appeal deficient in court fee under the provisions of law, referred above. Therefore, we find that the High Court was right in dismissing Section 5 application of the appellant as insufficient funds could not have been a sufficient ground for condonation of delay, under the facts and circumstance of the case. It would have been entirely a different matter had the appellant filed an appeal in terms of Section 149 CPC and thereafter removed the defects by paying deficit court fees. This has evidently not been done.

12. This Court, while emphasizing the scope of Section 5 of the Limitation Act, in the case of Mahant Bikram Dass Chela versus Financial Commissioner, Revenue, Punjab, Chandigarh [(1977) 4 SCC 69] has held:

“21. Section 5 of the Limitation Act is a hard task-master and judicial interpretation has encased it within a narrow compass. A large measure of case-law has grown around Section 5, its highlights being that one ought not easily to take away a right which has accrued to a party by lapse of time and that therefore a litigant who is not vigilant about his rights must explain every day's delay. These and similar considerations which influence the decision of Section 5 applications are out of place in cases where the appeal itself is preferred within the period of limitation but there is an irregularity in presenting it. Thus, in the instant case, there was no occasion to invoke the provisions of Section 5, Limitation Act, or of Rule 4, Chapter I of the High Court Rules. If the Division Bench were aware that Rule 3 of Chapter 2-C is directory, it would have treated the appeal

as having been filed within the period of limitation, rendering it inapposite to consider whether the delay caused in filing the appeal could be condoned.”

13. *This Court in the case of Basawaraj versus Special Land Acquisition Officer [(2013) 14 SCC 81] while rejecting an application for condonation of delay for lack of sufficient cause has concluded in Paragraph 15 as follows:*

“15. The law on the issue can be summarised to the effect that where a case has been presented in the court beyond limitation, the applicant has to explain the court as to what was the “sufficient cause” which means an adequate and enough reason which prevented him to approach the court within limitation. In case a party is found to be negligent, or for want of bona fide on his part in the facts and circumstances of the case, or found to have not acted diligently or remained inactive, there cannot be a justified ground to condone the delay. No court could be justified in condoning such an inordinate delay by imposing any condition whatsoever. The application is to be decided only within the parameters laid down by this Court in regard to the condonation of delay. In case there was no sufficient cause to prevent a litigant to approach the court on time condoning the delay without any justification, putting any condition whatsoever, amounts to passing an order in violation of the statutory provisions and it tantamounts to showing utter disregard to the legislature.”

14. *Therefore, we are of the considered opinion that the High Court did not commit any mistake in dismissing the delay condonation application of the present appellant.*

20. In view of the above discussion, there being no sufficient cause made out in the facts and circumstances of the case, the Interim Application is dismissed. No orders as to costs.

21. The Civil Revision Application accordingly cannot be entertained and to accordingly stand disposed.

22. Mr.Sachin Gite, learned Counsel for the Applicants, seeks stay of the order. Mr.Kekane, learned Counsel for the Respondents no.1, 4 and 5A to 5C, opposes the request. Having heard the learned Counsel, the request for stay is rejected.

(ABHAY AHUJA, J.)

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