

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.1970 OF 2017

Shrikant Baburao Paralkar (Since
Decd) and Ors. ... Petitioners

V/s.

Shyam Gajanand Purav and Anr. ... Respondents

WITH
INTERIM APPLICATION NO.1302 OF 2024
IN
WRIT PETITION NO.1970 OF 2017

Shyam Gajanand Purav Applicant
... (Org. Respdt. In W.P.)

V/s.

Shrikant Baburao Paralkar Decd. Thr
Lhrs Neela WD/O Shrikant Paralkar Respondents
and Ors. ... (Org.Petr. in W.P.)

Mr. Pritesh K. Bohade, Advocate for the Petitioner.

Mr. Viraj P. Ambure, Advocate for Respondent in WP/1970 of 17 &
Applicant in IA/1302 of 2024.

CORAM : RAJESH S. PATIL, J.

DATED : 14 FEBRUARY 2024

P.C.:

1. Rule. By consent taken up for final hearing.
2. This Writ Petition challenges and Order dated 7 December

2016, passed in Marji Application filed in Appeal No.410 of 2016.

3. The said Marji Application was filed seeking a condonation of delay of 64 days in filing the appeal before the Appellate Bench of the Court of Small Causes. The petitioner herein is the tenant against whom an eviction suit was filed. Trial Court decreed the suit. Being dis-satisfied Appeal was filed by Tenant. There was delay in filing Appeal.

4. The reasons given for condonation of delay of 64 days in filing the appeal is that the Applicant had spent lot of money on medical treatment and his financial conditions were not sound. It appears that the landlord / original defendant had opposed this Application therefore, the Appellate Bench heard the parties on merits. The Appellate Bench by its impugned order rejected the delay condonation application.

5. Today Mr. Ambure submits that the copies of medical certificates have not been enclosed to the Marji Application neither the same was enclosed to this Writ Petition therefore, the petitioner / tenant should not be believed that there was in real sense any medical treatment taken up by him. Apart from this ground there is no other grounds on which the present petition is opposed.

6. I have gone through the contents to the delay condonation application and the reply filed delay condonation application. So also the impugned order passed on delay condonation application.

7. The Supreme Court and the Bombay High Court in the following judgments have taken a liberal view and have condone

the delay in filing the proceedings.

8. Supreme Court in the judgment of *Collector, Land Acquisition, Anantnag and another Vs. Mst. Katji and Others* reported in **1987 SC 1353**, has held that:

“Every day’s delay must be explained” does not mean that a pedantic approach should be made. Why not every house’s delay. Every second’s delay ? The doctrine must be applied in a rational common sense pragmatic manner.”

9. Supreme Court in the case of *S. Ganesharaju (Dead) through Lrs V. Narasamma (Dead) through Lrs* reported in **(2013) 11 SCC 341**, more specifically, paragraph Nos. 12 and 13, of the said judgment held that a liberal construction to the cause of delay should be given. The said paragraphs are reproduced herein below:

12. The expression “sufficient cause” as appearing in Section 5 of the Limitation Act, 1963, has to be given a liberal construction so as to advance substantial justice. Unless the respondents are able to show mala fides in not approaching the court within the period of limitation, generally as a normal rule, delay should be condoned. The trend of the courts while dealing with the matter with regard to condonation of delay has tilted more towards condoning delay and directing the parties to contest the matter on merits, meaning thereby that such technicalities have been given go-by.

13. The rules of limitation are not meant to destroy or foreclose the right of parties. They are meant to see that parties do not resort to dilatory tactics but seek their remedy promptly.

10. Bombay High Court in the judgment of *Kamalbai Narasaiyya Shrimal and Another Vs. Ganpat Vithalrao Gavare* reported in **2007 (1) MH. L.J. 807**, paragraph Nos.13 and 15 has held:

13. The factual position is manifestly clear on bare perusal of the application for condonation filed by the petitioners before the learned District Judge. The only relevant statement in the application is thus:

“The delay caused in preferring the appeal is of six months. The caused delay is not intentional one. The appellants are poor and helpless persons. If the delay is not cononced appellant may cause irreparable loss which cannot be compensated in terms of money. The suit was for recovery of possession and present appellants are tenants. If the delay is not condoned then appellants will become shelterless.”

15. The expression “sufficient cause” cannot be erased from section of the Limitation Act by adopting excessive liberal approach which would defeat the very purpose of section 5 of the Limitation Act. There must be some cause which can be termed as a sufficient one for the purpose of delay condonation. I do not find any such “sufficient cause” stated in the application and as such no interference in the impugned order is called for.”

11. Taking into considering the facts of the present proceedings and the law as laid down by the Supreme Court and the High Court. I am satisfied that this Writ Petition requires to be allowed.

12. Rule is made absolute in terms of prayer clause (a). The impugned Order dated 17 December 2016, passed by the Small Causes Court, Appellate bench in order below Marji Application No.83 of 2016 is quashed and set aside. The delay of 64 days in filing Appeal No.410 of 2016 is condoned. The Appeal be taken back to the file and the Appellate Bench of the Court of Small Causes should hear the Appeal No.410 of 2016 on its own merits, as expeditiously as possible.

13. Since the Writ Petition itself has been disposed of by this order nothing survives in the Interim Application No.1302 of 2024, Interim Application is disposed of.

(RAJESH S. PATIL, J.)