

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

**INTERIM APPLICATION NO.10687 OF 2024
IN
CIVIL REVISION APPLICATION (STAMP) NO.1765 OF 2024**

1. The State of Maharashtra,
Mantralaya, Mumbai.
2. Commissioner of Police,
Having his head office at Office of
the Police Commissioner of
Mumbai.

**...Applicants
(orig. Defendants)**

V/s.

1. Mayuri wd/o. Kaushik Shah
2. Vaibhav S/o. Kaushik Shah
3. Harshita d/o. Kaushik Shah
4. Nikhil s/o Harilal Shah
5. Zakiuddin Abedali Electricwala

**...Respondents
(Orig. Plaintiffs)**

Mr. D.J. Haldankar, AGP for the Applicants-State.

Dr. Abhinav Chandrachud i/b. Ms J.P. Thakkar for the Respondents.

Mr. Somnath Kohore, PSI and Mr. Atif Shaikh, Law Officer, Office of the Police Commissioner of Mumbai, present.

CORAM : SANDEEP V. MARNE, J.

Dated : 28 August 2024.

JUDGMENT:

1) The State of Maharashtra and Commissioner of Police, Mumbai have filed this Interim Application seeking condonation of delay of 1 year and 300 days in filing the Civil Revision Application for challenging the decree dated 3 February 2020 passed by the Appellate Bench of the Small Causes Court by which the appeal preferred by Applicants challenging the eviction decree dated 31 October 2012

passed by the learned Single Judge of the Small Causes Court has been dismissed.

2) Plaintiffs-landlords instituted R.A.E. & R. Suit No. 632/1148 of 2004 against Applicants/Defendants seeking recovery of possession of the suit premises being Room No. 33 situated on the 4th floor of 'Ahmed Building' situated at 49/51, Lohar Chawl, Mumbai- 400 002, in which Defendant No. 1 was inducted as monthly tenant at rent of Rs. 487.50. The Suit was instituted on the ground of *bonafide* requirement and arrears of rent. The Suit came to be decreed on the ground of arrears of rent on 31 October 2012 holding that Plaintiffs served valid notice on Defendants under provisions of Section 15(2) of the Maharashtra Rent Control Act, 1999 (the **MRC Act**) and that Defendants failed to pay the arrears of rent after receipt of notice. It was further held that Defendants failed to deposit the arrears of rent even after receipt of suit summons under the provisions of Section 15(3) of the MRC Act. Accordingly, Defendants were directed to handover possession of the suit premises to Plaintiffs vide decree dated 31 October 2012.

3) Applicants/Defendants filed Appeal No.107 of 2013 challenging the decree of the Trial Court on 31 October 2012 before the Appellate Bench of the Small Causes Court. The appeal came to be dismissed vide judgment and decree dated 3 February 2020. The present Revision Application is lodged on 17 January 2024.

4) Mr. Haldankar, the learned AGP would appear for Applicants and submit that the Revision Application has been filed by the State Government with utmost alacrity. The events pleaded in the detailed chronology in the Application would indicate the prompt steps at every level for taking decision for filing of the Revision Application. That the pandemic may have ended for common litigants on 18 February 2022,

but for police department the machinery needed to be deployed for much longer period after 18 February 2022. So far as the period after 28 February 2022 is concerned, it is submitted by him that for Police Department, the situation had not normalized even after 28 February 2022 and therefore the Police machinery was not back on the track for taking decisions with usual speed. He has further submitted that the Applicants being a part of Government establishment, decision making involved processing of proposals at various hierarchical levels. He has submitted that after 1 March 2022, steps have been taken for securing various approvals for filing of the Revision Application and delay involved in seeking various approvals is not deliberate and is attributable to the peculiar functioning of various departments of the State Government.

5) Dr. Chandrachud, the learned counsel appearing for Plaintiffs-landlords would oppose the Interim Application submitting that no justifiable cause is shown for condonation of inordinate delay of more than 4 long years in filing the Revision Application. That if any department had permission to function during pandemic period was the police department and therefore the Applicants cannot be permitted to take shelter of pandemic for explaining the inordinate delay. He would object to justification sought to be canvassed on behalf of Applicants about their status as Government. He would submit that mere status of Applicants as departments of State Government, does not confer any special status on them in the matter of condonation of delay. He has relied upon some of the judgments in support of his contentions that administrative delay by State as a litigant cannot be accepted in absence of sufficient cause being made out. He has relied upon judgments of the Apex Court in ***State of Madhya Pradesh & Ors vs Bherulal¹, Maniben Devraj Shah v. Municipal***

¹ (2020) 10 SCC 654

Corporation of Brihan Mumbai² and *Pundalik Jalam Patil (D) LRs. V. Executive Engineer, Jalgaon Medium Project & others.*³

6) Rival contentions of parties now fall for court's determination.

7) It must be observed at the very outset that the delay in filing the Revision Application is computed as 1 year and 300 days by excluding the entire period from 15 March 2020 to 28 February 2022 on account of Order of the Supreme Court dated 10 January 2022. Otherwise, the decree of the Appellate Bench is passed on 3 February 2020 and the Revision Application is lodged on 17 January 2024. Thus, the decree of the Appellate Bench is sought to be challenged after passage of four long years.

8) Applicants have pleaded in the application seeking condonation of delay that the period of limitation was suspended during the period from 15 March 2020 till 28 February 2022 on account of COVID-19 pandemic and therefore the concerned officer could not forward the proposal for filing of the Revision Application for seeking sanction. However, it is also averred in the application that on 30 June 2021, the Home Department, Mantralaya, Mumbai called for documents in accordance with the proposal from office of Commissioner of Police. This shows that proposal was submitted by Commissioner of police to the Home Department before 30 June 2021. This averment also shows that the process of securing sanction for challenging the decree had commenced well before 30 June 2021 i.e. during Covid-19 pandemic period. The chronology of events indicated in paragraph 5 of the Interim Application shows that at least five steps were taken during suspension of limitation period for seeking sanction for filing of Revision Application. It therefore, cannot be contended that nothing could be done or nothing has actually been done towards filing of the

² (2012) 5 SCC 157

³ (2008) 17 SCC 448

Revision Application during the suspension of limitation period of 15 March 2020 till 28 February 2022.

9) It is contended by Dr. Chandrachud that Applicants-Police Department had no restrictions during Covid-19 pandemic period, and all its departments were functional. This possibly appears to be the reason why some steps were taken at least after June-2021 for securing sanction for filing of the Revision Application. However, since the Government offices functioned with less strength of staff during the COVID-19 pandemic period, it cannot be stated that Applicants were in the position to undertake necessary steps with usual speed for filing of Revision Application during such period. Also, since the entire period of limitation upto 28 February 2022 has been suspended by the Supreme Court by Order dated 10 January 2022, that period cannot be counted while computing the delay in filing the Revision Application just because the Applicants happen to be a part of Police establishment.

10) Coming to the status of Applicants as departments of State Government, the law is now fairly well settled that Governments and its instrumentalities do not enjoy any special treatment while seeking condonation of delay and that their mere status is not a ground of condoning inordinate delay, in absence of any valid justification. It would be apposite to make a reference to some of the judgments of the Supreme Court in this regard. In *State of Madhya Pradesh vs Bherulal* (supra) the Apex Court has held in paragraph 2, 3 and 6 as under:

2. We are constrained to pen down a detailed order as it appears that all our counseling to Government and Government authorities have fallen on deaf ears i.e., the Supreme Court of India cannot be a place for the Governments to walk in when they choose ignoring the period of limitation prescribed. We have raised the issue that if the Government machinery is so inefficient and incapable of filing appeals/petitions in time, the solution may lie in requesting the Legislature to expand the time period for filing limitation for Government authorities because of their gross incompetence. That

is not so. Till the Statute subsists, the appeals/petitions have to be filed as per the Statutes prescribed.

3. No doubt, some leeway is given for the Government inefficiencies but the sad part is that the authorities keep on relying on judicial pronouncements for a period of time when technology had not advanced and a greater leeway was given to the Government (***Collector, Land Acquisition, Anantnag & Anr vs. Mst. Katiji & Ors.*** (1987) 2 SCC 107). This position is more than elucidated by the judgment of this Court in Office of the Chief ***Post Master General & Ors. v. Living Media India Ltd. & Anr.*** (2012) 3 SCC 563 where the Court observed as under:

“27) It is not in dispute that the person(s) concerned were well aware or conversant with the issues involved including the prescribed period of limitation for taking up the matter by way of filing a special leave petition in this Court. They cannot claim that they have a separate period of limitation when the Department was possessed with competent persons familiar with court proceedings. **In the absence of plausible and acceptable explanation, we are posing a question why the delay is to be condoned mechanically merely because the Government or a wing of the Government is a party before us.**

28) Though we are conscious of the fact that in a matter of condonation of delay when there was no gross negligence or deliberate inaction or lack of bonafide, a liberal concession has to be adopted to advance substantial justice, we are of the view that in the facts and circumstances, the Department cannot take advantage of various earlier decisions. The claim on account of impersonal machinery and inherited bureaucratic methodology of making several notes cannot be accepted in view of the modern technologies being used and available. **The law of limitation undoubtedly binds everybody including the Government.**

29) **In our view, it is the right time to inform all the government bodies, their agencies and instrumentalities that unless they have reasonable and acceptable explanation for the delay and there was bonafide effort, there is no need to accept the usual explanation that the file was kept pending for several months/years due to considerable degree of procedural red- tape in the process.** The government departments are under a special obligation to ensure that they perform their duties with diligence and commitment. **Condonation of delay is an exception and should not be used as an anticipated benefit for government departments.** The law shelters everyone under the same light and should not be swirled for the benefit of a few. Considering the fact that there was no proper explanation offered by the Department for the delay except mentioning of various dates, according to us, the Department has miserably failed to give any acceptable and cogent reasons sufficient to condone such a huge delay.”

Eight years hence the judgment is still unheeded!

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6. We are also of the view that the aforesaid approach is being adopted in what we have categorized earlier as “certificate cases”. The object appears to be to obtain a certificate of dismissal from the Supreme Court to put a quietus to the issue and thus, say that nothing could be done because the highest Court has dismissed the appeal. It is to complete this formality and save the skin of officers who may be at default that such a process is followed. We have on earlier occasions also strongly deprecated such a practice and process. There seems to

be no improvement. The purpose of coming to this Court is not to obtain such certificates and if the Government suffers losses, it is time when the concerned officer responsible for the same bears the consequences. The irony is that in none of the cases any action is taken against the officers, who sit on the files and do nothing. It is presumed that this Court will condone the delay and even in making submissions, straight away counsels appear to address on merits without referring even to the aspect of limitation as happened in this case till we pointed out to the counsel that he must first address us on the question of limitation.

(emphasis added)

11) In **Maniben Devraj Shah**, (supra) the Apex Court held in paragraphs 23, 24 and 25 as under:

23. What needs to be emphasised is that even though a liberal and justice-oriented approach is required to be adopted in the exercise of power under Section 5 of the Limitation Act and other similar statutes, the courts can neither become oblivious of the fact that the successful litigant has acquired certain rights on the basis of the judgment under challenge and a lot of time is consumed at various stages of litigation apart from the cost.

24. What colour the expression “sufficient cause” would get in the factual matrix of a given case would largely depend on bona fide nature of the explanation. If the court finds that there has been no negligence on the part of the applicant and the cause shown for the delay does not lack bona fides, then it may condone the delay. If, on the other hand, the explanation given by the applicant is found to be concocted or he is thoroughly negligent in prosecuting his cause, then it would be a legitimate exercise of discretion not to condone the delay.

25. In cases involving the State and its agencies/instrumentalities, the court can take note of the fact that sufficient time is taken in the decision-making process but no premium can be given for total lethargy or utter negligence on the part of the officers of the State and/or its agencies/instrumentalities and the applications filed by them for condonation of delay cannot be allowed as a matter of course by accepting the plea that dismissal of the matter on the ground of bar of limitation will cause injury to the public interest.

(emphasis added)

12) In **Pundalik Jalam Patil** (supra) the Apex Court has held in paragraph 31 as under:

31. It is true when the State and its instrumentalities are the applicants seeking condonation of delay they may be entitled to certain amount of latitude but the law of limitation is same for citizen and for Governmental authorities. Limitation Act does not

provide for a different period to the government in filing appeals or applications as such. **It would be a different matter where the Government makes out a case where public interest was shown to have suffered owing to acts of fraud or collusion on the part of its officers or agents and where the officers were clearly at cross purposes with it. In a given case if any such facts are pleaded or proved they cannot be excluded from consideration and those factors may go into the judicial verdict.** In the present case, no such facts are pleaded and proved though a feeble attempt by the learned Counsel for the respondent was made to suggest collusion and fraud but without any basis. We cannot entertain the submission made across the Bar without there being any proper foundation in the pleadings.”

(emphasis and underlining added)

13) Thus, position of law appears to be well settled that even Government is required to show reasonable and acceptable explanation for delay and condonation of inordinate delay cannot be sought under guise of procurement of administrative approvals. The Apex Court has held that the Limitation Act does not provide for a different period to the Government for filing appeal or applications and that the law of limitation is same for citizens and for Government authorities. True it is that certain amount of latitude can be shown to Government and its instrumentalities on account of complex decision making process. Same however, does not mean that total lethargy on the part of the State and its instrumentalities in the matter of filing of appeals can be ignored as a matter of course and inordinate delay on the part of the State and its instrumentalities can be condoned. It is only when the Court is satisfied that the inordinate delay is on account of fraud or collusion on the part of any of the officers of the Government or that public interest is likely to suffer on account of such fraud or collusion, the Courts can condone inordinate delay considering the unique facts and circumstances of a case. However, in a case where there is neither involvement of public interest nor any allegation of fraud or collusion, inordinate delay in filing appeal cannot be condoned only because the litigant is a Government.

14) Keeping in mind the above broad principles relating to condonation of delay in appeals filed by the State or by its instrumentalities, I proceed to examine the justification pleaded in the application for condonation of delay. Admittedly, it is neither pleaded nor suggested during the course of arguments that there was any collusion on the part of any government officials which resulted in the delay. To my mind, there appears to be absolutely no public interest involved in the matter of dispute relating to recovery of possession of tenanted house premises. It is not that the Government is running any public office from the suit premises. The suit room is taken on rent is being used for residence of staff of police department. Thus there is neither any allegation of collusion nor question of sufferance of public interest on account of any such collusion. It therefore becomes necessary for the Applicants to offer justifiable reason for condonation of delay.

15) In the chronology of events pleaded in paragraph 5 of the application, it is contended that the limitation period for filing Civil Revision Applicant expired on 1 March 2022 i.e. at the end of restrictions relating to Covid-19 pandemic. It appears that correspondence between Commissioner of Police, Home Department and the Government Pleader had already commenced before 28 February 2022. This is clear from the pleadings referring to addressing of letter by DG Police office to Home Department before 30 June 2021. However as observed above, the period upto 28 February 2022 needs to be ignored and accordingly, it would be appropriate to concentrate on events post 1 March 2022. It is pleaded that the Home Department sent letter dated 24 May 2022 to Commissioner of Police for seeking opinion from the Government Pleader for verifying whether the case was fit to be challenged before this Court or not. Upon receipt of letter dated 24 May 2022 from the Home Department, the Office of the

Commissioner of Police took almost one month in addressing letter to Government Pleader for seeking opinion. The office of Government Pleader took three months in giving opinion to the Police Commissioner on 13 September 2022. Thereafter the matter apparently remained pending before the Home Department for a considerable period of time upto May -2023. Thus, the Home Department took time from September-2022 to May -2023 for approving the proposal of filing of appeal. It is only after approval was received from the State Government that the office of Commissioner of Police thought of applying for certified copy of the decree of the Appellate Bench and such application was filed in Small Causes Court on 16 May 2023. Thus, for a period of more than three long years, even an application for certified copy was not made. Thereafter in July 2023, the Government Pleader's office directed seeking of permission of Law and Judiciary Department for filing of the Civil Revision Application. Again, the proposal was sent to Law and Judiciary Department for filing of the Civil Revision Application. The permission was granted by the Law and Judiciary Department on 14 September 2023. However, the Civil Revision Application was ultimately lodged on 17 January 2024.

16) Considering the above justification pleaded in the Interim Application, it cannot be stated that any reasonable cause is made out for condonation of inordinate delay even after excluding the period from 15 March 2020 to 28 February 2022.

17) It must also be noted that the impugned decree involves eviction of Applicants/Defendants from a residential room in respect of which they were tenants. The proposed challenge in the Revision Application does not involve any larger public interest or possibility of cause of substantial financial loss to the State Government. As held by the Supreme Court, interest of successful litigant also needs to be

borne in mind while permitting Governments and their instrumentalities in setting up challenge after inordinate delay. The Plaintiffs-landlords have secured decree for eviction on 31 October 2012. By now period of 12 long years has passed from the date of eviction decree. The appeal of Applicants has been dismissed on 3 February 2020 and period of 4 years has elapsed since then. The lethargy on the part of Applicants in not taking timely steps for challenging the eviction decree cannot be ignored at the cost of interest of Plaintiffs, who have been waiting for possession of premises for 20 long years, considering that the Suit was lodged in 2004.

18) Considering the overall circumstances of the case, I do not find that any justifiable cause is shown for condoning the inordinate delay in filing the Revision Application. The Interim Application for condonation of delay is accordingly rejected.

19) With rejection of application for condonation of delay, nothing would survive in Civil Revision Application. Same accordingly stands dismissed. Considering the facts and circumstances of the present case, there shall be no orders as to costs.

[SANDEEP V. MARNE, J.]