

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 3533 OF 2024

1. Mahendra Jayantilal Shanklesha }
 Age: 41 years Occ: Business }
 Residing at: c/o Jayantilal Sohanraj }
 Shanklesha First Floor, in front of }
 Bank of Baroda, Near Raja Hotel, }(Petitioner)
 Ahilyadevi Chowk } / Ori. Applicant

Versus

Kum Anita Hiralal Thakkar }
 Age: 19 years Adult Occ: Business }
 Residing at: Laxmi Building, }
 Narayan Wadi, Old Station Road, }
 Kalyan (W), District-Thane }Respondent
 } (Orig Respondent)

Mr R.S. Datar a/w Druti Datar, for the Petitioner.

Ms. Pooja Beeramgudam, for the Respondent

CORAM : N.J. JAMADAR, J.

DATED : 19TH JUNE 2025

JUDGMENT:

1. Rule. Rule made returnable forthwith and, with the consent of learned counsel for the parties, heard finally.
2. This petition under article 227 of the Constitution of India assails an order dated 21st November 2023, passed by the learned District Judge, Kalyan in CMA No. 2 of 2023, whereby an application

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preferred by petitioner/plaintiff for condonation of delay in filing the appeal against the judgment and decree dated 27th October 2021, passed in Regular Civil Suit No. 138 of 2013, by the learned Civil Judge, Kalyan, came to be dismissed.

3. The petitioner claimed to be a tenant of the suit premises, owned by the respondent. The petitioner instituted a suit for declaration that the petitioner is the tenant in the suit premises and to restrain the defendant from causing obstruction to repairs then being carried out by the petitioner, to the suit premises.

4. Upon contest, the suit came to be dismissed by the learned Civil Judge by a Judgment and Decree dated 27th October 2021.

5. The petitioner filed an appeal thereagainst along with an application for condonation of delay, on 4th October 2022. It was, inter alia, asserted in the application for condonation of delay that the impugned judgment came to be delivered during the course of Covid-19 Pandemic. On account of the situation then prevalent, the petitioner could not contact his advocate. The certified copies of the judgment and decree were obtained on 25th August 2022. The petitioner had been to his native place at Rajasthan.

6. Therefore, there was 383 days delay in filing the appeal. The

petitioner sought to take benefit of the order passed by the Supreme Court in *Suo Moto Writ Petition (C) No. 3 of 2020* dated 10th January 2022, suspending the period of limitation from 15th March 2020 till the 28th February 2022. Excluding the said period, the petitioner claimed that there was delay of about 185 days.

7. The application was resisted by the respondent / defendant.

8. By the impugned order, the learned District Judge was persuaded to dismiss the application observing, *inter alia*, that the record indicated that the learned Advocate for the petitioner was aware of the passing of the decree on 27th October 2021 and, despite knowledge, the petitioner did not take diligent steps to file the appeal. In the opinion of learned District Judge, the delay was attributable to negligence and indifference on the part of the petitioner.

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

10. An affidavit-in-reply has been filed, on behalf of Respondent. Controverting the contentions in the petition it was, *inter alia*, contended that the petitioner was very much aware of the passing of the judgment and decree on 27th October 2021 as the pronouncement of judgment was noted by the advocate for the

petitioner on the very day. Banking upon the case details maintained by the District Court at Kalyan, an endeavour was made to demonstrate that the application for condonation of delay was, in fact, filed on 6th January 2023. Thus, the delay was both inordinate and unexplained.

11. Mr. Datar, the learned counsel for the petitioner, would urge that the learned District Judge took a hyper-technical view of the matter. The learned District Judge was not expected to adopt a pedantic approach. The impugned order, thus, suffers from the vice of disregard to the settled principles of law in the matter of condonation of delay.

12. Mr. Datar would urge that, in view of the order passed by the Supreme Court in *Suo Moto Writ Petition (C) No. 3 of 2020*, the appeal could have been filed within a period of 90 days from 1st March 2022. The said period expired on 30th May 2022. If viewed in this context the delay in filing the application; which was filed on 4th October 2022, cannot be said to be inordinate by any standard. At any rate, the petitioner has ascribed justifiable reasons.

13. In opposition to this Ms. Pooja Beeramgudam made a strenuous effort to persuade the Court to hold that the application for

condonation of delay was filed on 6th January 2023 as is evident from the case details. Secondly, once the fact of the pronouncement of the judgment on 27th October 2021 was noted by the learned advocate for the petitioner, before the Trial Court, on the very day, the petitioner cannot be heard to urge that, he was unaware of delivery of the judgment.

14. I have carefully perused the material on record. It is trite an application for condonation of delay should receive liberal consideration. The Courts, more often than not, lean in favour of the condonation of delay so as to advance the cause of the substantive justice. The majesty of the Court lies in deciding the matter on merits rather than on technicalities. A very rigid approach in the matter of condonation of delay, leads to a situation of the procedure, which is handmaid of justice, scoring a march over the substantive justice. The Courts are also required to be conscious of the fact that, ordinarily, a litigant does not gain any advantage by approaching the Court belatedly. Therefore, the term 'sufficient cause' is construed rather liberally.

15. A profitable reference, in this context, can be made to the decision of the Supreme Court in the case of *N. Balakrishnan V/s. M.*

Krishnamurthy¹ wherein the law was enunciated 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 criterion. Sometimes delay of the shortest range may be uncondonable 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 reversional jurisdiction, unless the exercise of discretion was on whole untenable grounds or arbitrary or perverse. But it is a different matter when the first cut refuses to condone the delay. In such cases, the superior cut 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 litium* (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.

1 AIR 1998 Supreme Court 3222,

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 V/s. Kuntal Kumari (AIR 1969 SC 575)* and *State of W.B. V/s. Administrator, Howrah Municipality ((1972) 1 SC 366)*.

13. It must be remembered that in every case of delay there can be some lapse on the part of the litigant concerned. That alone is not enough to turn down his plea and to shut the door against him. If the explanation does not smack of *mala fides* or it is not put forth as part of a dilatory strategy the court must show utmost consideration to the suitor. But when there is reasonable ground to think that the delay was occasioned by the party deliberately to gain time then the court should lean against acceptance of the explanation. While condoning delay the Court should not forget the opposite party altogether. It must be borne in mind that he is a loser and he too would have incurred quite a large litigation expenses. It would be a salutary guideline that when courts condone the delay due to laches on the part of the applicant the court shall compensate the opposite party for his loss."

(emphasis supplied)

16. On the aforesaid touchstone, reverting to the facts of the case, it is necessary to note that the claim of the petitioner that the application for condonation of delay was filed on 4th October 2022 is substantiated by the endorsement made on the application by the Court official, at the time of institution. Secondly, the learned District Judge did not properly appreciate the import of the order of the Supreme Court in *Suo Moto Writ Petition (C) No. 3 of 2020*, whereby the Supreme Court directed that the period from 15th March 2020 till 28th February 2020 shall stand excluded for the purpose of limitation

as may be prescribed under any general or special laws in respect of judicial or quasi judicial proceedings.

17. Indubitably, the impugned judgment and decree was passed by the Trial Court during said window period. Consequently, in all cases where the limitation had expired during the period between 15th March 2020 till 28th February 2022, by the aforesaid order the Supreme Court provided a further period of limitation of 90 days. The said period of 90 days expired on 30th May 2022. The learned District Judge was thus not justified in dismissing the application for condonation of delay by adverting to the acts or omissions on the part of the petitioner during the said window period.

18. Even otherwise, the Court cannot lose sight of the fact that the exigency of the situation which arose on account of Covid-19 pandemic was alarming and unprecedented. In the said context, the learned District Judge ought to have adopted a more liberal approach. It is true, there is a further delay post 31st May 2022. However, the said delay is not inordinate. A sufficient cause was ascribed for the same, as well. At any rate, the inconvenience and delay caused to the respondent could have been compensated by awarding costs. I am, therefore, inclined to allow the petition.

19. Hence the following order:

:O R D E R :

- i) The Petition stands allowed.
- ii) The impugned order stands quashed and set aside.
- iii) The application for condonation of delay stands allowed.
- (iv) The delay in preferring the appeal stands condoned subject to the Petitioner-Appellant paying costs of Rs. 25,000/- to the respondent-defendant within a period of four weeks from today.
- v) The payment of costs shall be a condition precedent for registering the appeal.

20. Rule is made absolute in the aforesaid terms.

(N.J. JAMADAR, J)