

Arun Sankpal

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 8056 OF 2024

Rambadai Sumeri Gupta

..Petitioner

Versus

Ramshankar Sarju Chaudhari & Anr

...Respondents

Mr. H.P. Pandey, for the Petitioner.

Mr. Makarand Raut, with Bhanka Solanki, for the Respondents.

CORAM: N. J. JAMADAR, J.

DATED : 30th JUNE 2025

ORAL ORDER:

- 1.** Heard the learned Counsel for the parties.
- 2.** The challenge in this Petition is to a judgment and order dated 26th February 2024 passed by the Appellate Bench of the Court of Small Causes, Mumbai, in M Appeal No. 122 of 2022, whereby the Appeal preferred by the Petitioner-landlord against judgment and order dated 6th April 2022 passed by the Trial Court in MARJI Application No. 33 of 2020 in RAE Suit No. 1029 of 1995 rejecting the said Application for restoration of RAE Suit No. 1029 of 1995, which was dismissed in default, came to be dismissed by affirming the order passed by the Trial Court.

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3. The Petitioner had instituted RAE Suit No. 1029 of 1995, for recovery of possession of the demised premises on the grounds of default in payment of rent and unlawful sub-letting. As the suit was not diligently prosecuted, on 13th October 2014 the Suit came to be dismissed for default.

4. The Petitioner took out MARJI Application No. 33 of 2020, asserting, *inter alia*, that the Petitioner was suffering from diabetes and was in an abnormal situation since 2005; he was advised not to take stress and travel and he was shifted to his native place for taking complete bed-rest. Thus, in the absence of the Petitioner, Petitioner's son was looking after the properties as well as the proceedings before the Court.

5. In the month of June 2020, in the wake of a quarrel with Sushila, the daughter of the defendnt-tenant, the Petitioner enquired with his son about the progress of the suit instituted against the Defendant. Thereupon it transpired that the suit came to be dismissed on 13th October 2014. Hence the Application for condonation of delay of 1932 days in filing the Application to set aside the dismissal order and restore the RAE Suit No. 1029 of 1995.

6. The Application was resisted by the Respondent.

7. By an order dated 6th April 2022, the Trial Court was persuaded to reject the Application noting that the Petitioner-Plaintiff has made a

deliberate incorrect statement in the Application as a ground to condone the inordinate delay. Though the Petitioner claims that on account of ill health the was indisposed, there was material to show that the Petitioner had, in the interregnum, appeared before the other authorities and prosecuted the proceedings in relation to his properties. Thus, the Petitioner failed to ascribe a sufficient cause.

8. The Appellate Bench of the Court of Small Causes, found no fault with the order passed by the Trial Court. On an independent appreciation, the Appellate Bench also came to the conclusion that there was a deliberate misstatement on the part of the Petitioner, and the Petitioner failed to account for the huge delay.

9. Mr. Pandey, the learned Counsel for the Petitioner, would submit that the Courts below have proceeded on an incorrect premise and took a very hyper technical view of the matter. The Courts ought to have adhered to the well recognized principle that the Courts are required to adopt a liberal approach in the matter of condonation of delay so as to advance the cause of substantive justice. At the most, the delay could have been condoned imposing costs. To lend support to his submission, Mr. Pandey placed reliance on the judgment of the Supreme Court in the case of **G.P. Srivastava Vs R.K. Raizada & Ors.**¹

10. In opposition to this, Mr. Raut, the learned Counsel for the Respondents, would urge that the instant case is not one of a mere delay

1 2000 (3) SCC 54.

or some indolence on the part of the Petitioner. The material placed by the Respondents indicates that, there was gross suppression of facts and deliberate false statements on the part of the Petitioner. A party who approaches the Court with a false case does not deserve any relief. Reliance was placed on the judgment of the Supreme Court in **S.P Chengalvaraya Naidu (Dead) by LRs Vs Jagannath (Dead) By LRs & Ors**² and a judgment of this Court in the case of **Mahesh Jayalal Dadhia & Anr Vs M/s Thio Pharma**.³

11. The legal position as regards the exercise of discretion in the matter of condonation of delay is well neigh settled. Ordinarily, the Courts lean in favour of condonation of delay so as to advance the cause of substantive justice. The majesty of law lies in deciding matters on merit rather than on technicalities. Thus the term sufficient cause is construed liberally so that the procedure which is a handmaid of justice does not score a march over the substantive justice.

12. In the case of **N. Balakrishnan Vs M Krishnamurthy**⁴ on which reliance was placed by the Petitioner before the Appellate Bench of the Court of Small Causes, the legal position was expounded 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.

2 (1994) 1 SCC 1.

3 1999(2) Mh.LJ 135.

4 (1998) 7 SCC 123.

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 in 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 putt 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.

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)

13. At the same time the Court cannot lose sight of the principle that, if the delay is both inordinate and unexplained, the exercise of the discretion to condone the delay would fall foul of the test of exercise discretion in a judicious manner.

14. In the case at hand, the delay is undoubtedly inordinate. This Court was anxious to consider the reasons ascribed by the Petitioner in the Application for condonation of delay and appreciate whether the same amounts to sufficient cause even when construed rather generously.

15. As noted above, the Petitioner had ascribed the reasons of personal illness and the stay at the native place and the entrustment of the property and the proceedings to his son. The material on record, however, shows to the contrary. Voluminous documents were placed on record to show that, in the intervening period, the Petitioner had approached various authorities and pursued the proceedings.

16. In this backdrop, the Trial Court and the Appellate Bench were persuaded to return a finding that the reasons for the condonation of delay sought to be ascribed by the Petitioner were incorrect and an attempt was made to get away with the delay by making deliberate misstatement. Such a conduct cannot be countenanced.

17. A useful reference in this context can be made to a judgment of the Supreme Court in the case of **Esha Bhattacharjee Vs Managing Committee of Raghunathpur Nafar Academy & Ors**,⁵ wherein the following principles were *inter alia* enunciated.

“21.

⁵ (2013) 12 SCC 649.

21.4 (iv) No presumption can be attached to deliberate causation of delay but, gross negligence on the part of the counsel or litigant is to be taken note of.

21.5 (v) Lack of bona fides imputable to a party seeking condonation of delay is a significant and relevant fact.

... ..

21.9 (ix) The conduct, behaviour and attitude of a party relating to its inaction or negligence are relevant factors to be taken into consideration. It is so as the fundamental principle is that the courts are required to weigh the scale of balance of justice in respect of both parties and the said principle cannot be given a total go by in the name of liberal approach.

21.10 (x) If the explanation offered is concocted or the grounds urged in the application are fanciful, the courts should be vigilant not to expose the other side unnecessarily to face such a litigation.

21.11 (xi) It is to be borne in mind that no one gets away with fraud, misrepresentation or interpolation by taking recourse to the technicalities of law of limitation.”

18. In a recent pronouncement, in the case of **Pathapati Subba Reddy (Died) By LRs & Ors Vs Special Deputy Collector (LA)**,⁶ the Supreme Court re-capsulated the principles which govern the exercise of discretion to condone the delay, as under:

“26. On a harmonious consideration of the provisions of the law, as aforesaid, and the law laid down by this Court, it is evident that:

6 2024 SCC OnLine SC 513.

- (i) Law of limitation is based upon public policy that there should be an end to litigation by forfeiting the right to remedy rather than the right itself;
- (ii) A right or the remedy that has not been exercised or availed of for a long time must come to an end or cease to exist after a fixed period of time;
- (iii) The provisions of the Limitation Act have to be construed differently, such as Section 3 has to be construed in a strict sense whereas Section 5 has to be construed liberally;
- (iv) In order to advance substantial justice, though liberal approach, justice-oriented approach or cause of substantial justice may be kept in mind but the same cannot be used to defeat the substantial law of limitation contained in Section 3 of the Limitation Act;
- (v) Courts are empowered to exercise discretion to condone the delay if sufficient cause had been explained, but that exercise of power is discretionary in nature and may not be exercised even if sufficient cause is established for various factors such as, where there is inordinate delay, negligence and want of due diligence;
- (vi) Merely some persons obtained relief in similar matter, it does not mean that others are also entitled to the same benefit if the court is not satisfied with the cause shown for the delay in filing the appeal;
- (vii) Merits of the case are not required to be considered in condoning the delay; and
- (viii) Delay condonation application has to be decided on the parameters laid down for condoning the delay and condoning the delay for the reason that the conditions have been imposed, tantamounts to disregarding the statutory provision.”

19. Applying the aforesaid principles to the facts of the case it appears, the delay was both inordinate and unexplained. The Petitioner approached the Court with a demonstrably false case to account for the delay. In these circumstances, the Courts below were within their rights in declining to exercise the discretion in favour of the Petitioner. Consequently, the Petition deserves to be dismissed.

20. Hence the following order.

: O R D E R :

The Petition stands dismissed.

[N. J. JAMADAR, J.]