

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.18295 OF 2024**

Nagesh Shivaji Parkale	...	Petitioner
versus		
S.S.Promoters and Builders	...	Respondent

Ms. Bhairavi Waravdekar, for Petitioner.

CORAM: N.J.JAMADAR, J.

DATE : 12 FEBRUARY 2025

P.C.

1. Heard the learned Counsel for the Petitioner.
2. The challenge in this Petition is to an order dated 27 February 2024 passed by the learned Civil Judge, Pune, condoning the delay of 670 days in preferring an application to set aside the ex-parte decree. The learned Civil Judge was of the opinion that the applicant – Respondent has ascribed justifiable reasons and satisfactorily explained the delay. The learned Civil Judge also proceeded on the premise that the refusal to condone the delay would cause serious prejudice to the Respondent-judgment debtor.
3. Learned Counsel for the Petitioner submitted that the trial Court has not considered the objections raised by the Petitioner to the application for condonation of delay. There was a huge delay of over 4 years and, yet, the trial Court has condoned the delay.
4. From the perusal of the application preferred by the Respondent for

condonation of delay, it seems that a dispute was sought to be raised about the proper service of the suit summons. It was further asserted that the Respondent came to know about the ex-parte decree in the month of April 2019, and, thereupon, certified copies were obtained and the application for setting aside the ex-parte order was moved. The Respondent has also claimed the exclusion of the period on account of Covid-19 Pandemic pursuant to the order passed by the Supreme Court.

5. The trial Court has found the cause ascribed for the delay justifiable. There is a subtle yet significant distinction in the approach to be adopted by the superior Court in two situations, namely, where the delay is condoned by the Court at the first instance and where the delay is not condoned by the court at the first instance. Once the Court at the first instance accept the explanation as sufficient, normally the superior Court should not disturb such finding, especially in the exercise of revisional or supervisory jurisdiction unless the exercise of discretion was on wholly unsustainable ground or borders on perversity or arbitrariness. On the contrary, when the Court at the first instance refuses to condone delay, the superior Court can evaluate the cause shown for the delay afresh and draw its own conclusion untrammelled by the conclusion of the Court at the first instance.

6. A useful 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 court refuses to condone the delay. In such cases, the superior court 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

1 (1998) 7 SCC 123

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 ut 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.

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*² and *State of W.B. V/s. Administrator, Howrah Municipality*³.

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

² AIR 1969 SC 575

³ (1972) 1 SC 366

mind that he is a looser and he too would have incurred quiet 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."

7. On the aforesaid touchstone, reverting to the facts of the case, this Court finds that the cause ascribed by the Respondent for condonation of delay cannot be jettisoned away as wholly unsustainable. A genuine issue about the due service of summons, prima facie, appears to have been raised which bears upon the knowledge on the part of the Respondent about the passing of the ex-parte decree. I must hasten to add that the said question of due service of the summons has to be decided by the trial Court on its own merits and in accordance with law and these observations are only with regard to the appraisal of the cause assigned for the condonation of delay.

8. Undoubtedly, there is some element of indolence and lapse on the part of the Respondent from the date of filing of the application for certified copies till the filing of the application for condonation of delay, even if the period of Covid-19 Pandemic is excluded. Yet, the delay does not appear to be intentional. Nor does it appear to be a case of lack of bonafide.

9. In the totality of the circumstances, since the Court at the first instance has exercised the discretion to condone the delay, this Court does not find any justifiable reason to interfere with the impugned order in exercise of the

supervisory jurisdiction.

10. The Writ Petition, thus, stands dismissed.

(N.J.JAMADAR, J.)