

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.12905 OF 2025

Neminath Developers Thru. Partner ... Petitioner
Jayesh R. Dedhia

V/s.

Mehul Gautam Khania ... Respondents

WITH

WRIT PETITION NO.12906 OF 2025

Neminath Developers Thru. Partner ... Petitioner

V/s.

Deepali Nilesh Khania ... Respondent

Digitally
signed by
VARSHA
DEEPAK
GAIKWAD
Date:
2025.10.17
10:17:49
+0530

Mr. Pariket Shah, for the petitioners in both petitions.

Mr. Asuhosh Shukla with P. Tiwari, for the respondent in both petitions.

CORAM : N.J. JAMADAR, J.

DATE : 13TH OCTOBER 2025.

PC:

1. Heard the learned counsel for the parties.
2. The challenge in these petitions is to an order dated 3rd May 2025, whereby the learned Judge, City Civil Court rejected the Notice of Motion taken out by the petitioner/defendant to condone 62 days' delay in seeking leave to defend the summary suit.

3. The summons was served on the defendant on 7th May 2024. The Notice of Motion seeking leave to defend came to be filed on 19th July 2024. In the affidavit in support of the Notice of Motion seeking condonation of delay, the petitioner has affirmed that on account of summer vacation to the Civil Court ,during the period from 13th May 2024 to 9th June 2024, and the fact that, in the intervening period, his advocate was appearing for LLM examination and defendant's father was also suffering from certain ailments, he could not file the affidavit seeking leave to defend the suit.

4. The application was resisted by the respondent/plaintiff.

5. The learned Judge, City Civil Court was of the view that, there was no material to substantiate the reasons ascribed by the defendant for condonation of 62 days delay. It was, inter alia, observed that despite the summer vacation the defendant could have taken the matter on board and filed the affidavit seeking leave to defend.

6. The learned counsel for the petitioner submitted that, the learned Judge, City Civil Court took a very hyper-technical view of the matter. It was not the case that, the defendant had not ascribed any reason. The learned Judge, City Civil Court ought to have construed

the cause ascribed by the defendant liberally.

7. The learned counsel for the respondent supported the impugned order. It was submitted that, the reasons assigned for the delay were general and vague.

8. I have perused the affidavit in support of the Notice of Motion. In every case in which a party seeks condonation of delay, some amount of indolence and remissness is bound to occur. In the case at hand, the defendant asserted that, as the summer vacation for the Civil Court intervened, the advocate who was briefed in the matter was appearing for the LLM examination, and defendant's father was unwell, he could not file an application seeking leave to defend within the stipulated period. It cannot be said that, the defendant had not ascribed any reason.

9. It is trite that, an application for condonation of delay ought to receive liberal consideration so as to advance the cause of substantive justice. Refusal to condone the delay often results in grave prejudice as a party is condemned unheard. The Courts lean in favour of condonation of delay so that the procedure, which is a handmaid of justice, is not allowed to score a march over substantive justice. A

useful reference in this context, can be made to the following observations of the Supreme Court in the case of *N. Balakrishnan V/s.*

*M. Krishnamurthy*¹.

“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 putt to litigation). Rules of

1 AIR 1998 Supreme Court 3222,

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 in 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)

10. Applying the aforesaid principles to the facts of the case at hand, I am inclined to hold that the defendant had ascribed sufficient cause for condonation of delay. The delay and inconvenience caused to the respondent-plaintiff can be taken care of by imposing appropriate conditions.

11. Hence, the following order:

ORDER

- i) The petition stands allowed.
- ii) The impugned order stands quashed and set aside.
- iii) The delay of 62 days in filing the affidavit seeking leave to defend the suit stands condoned, subject to following conditions:
 - a) Defendant shall pay costs of Rs. 10,000/- to the plaintiff within a period of two weeks.
 - b) It is clarified that payment of costs of Rs. 10,000/- shall be a condition precedent and the affidavit seeking leave to defend be taken on record after the costs are paid.
 - c) Learned Judge, City Civil Court is requested to hear and decide the Summons for Judgement as expeditiously as possible.

Petition disposed.

(N.J. JAMADAR, J)