



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

INTERIM APPLICATION NO.1467 OF 2025
IN
FIRST APPEAL st. NO. 1743 OF 2025

Vijay Verma.

...Applicant/Appellant.

Versus

Suresh Sharma and Others.

...Respondents.

Mr. Pawan B. Chauhan for the Appellant.

Mr. Ashok Singh for the Respondent No. 1.

Coram : Sharmila U. Deshmukh, J.

Date : March 19, 2025.

P. C. :

1. The present Interim Application has been preferred seeking condonation of delay of 2 years and 305 days caused in filing the First Appeal.
2. The First Appeal challenges the judgment and decree dated 16th March 2002 passed by the City Civil Court, Bombay in Suit No 8136 of 1999 declaring that the agreement dated 18th April 1995 executed between the Plaintiff and Defendant Nos.2 to 4 is illegal and void *ab initio* and directing the Defendant No. 4 to pay a sum of Rs. 9 lakh along with interest @ 9% p.a. from the date of suit till realisation.
3. The Application for condonation of delay pleads that during the pendency of Suit No.8136 of 1999, arbitration proceedings were

initiated and concluded and despite thereof the Civil Court proceeded with the instant suit. The Applicant never received notice/summons regarding the pending proceedings before the High Court of Bombay / City Civil Court. The Applicant became aware of the judgment and decree dated 16th March 2022 passed in the present suit only on 15th December 2024 from the Respondent No.4 when they met in Indore. It is pleaded that Applicant had duly appointed lawyer to oppose the suit and had placed on record the written statement opposing the suit. Due to Covid-19 pandemic and thereafter he was not aware of the suit proceedings and *ex parte* order dated 16th March 2022 has been passed against all Defendants and the Appeal filed by other Defendants has been admitted after the delay being condoned and the same are pending.

4. An affidavit-in-reply came to be filed by the Respondent No.1 contending that Applicant was aware of the proceedings filed before this Court and subsequently transferred to the City Civil Court. It was contended that the Advocate for the Applicant had duly filed his Vakalatnama on 2nd March 2010 before this Court and duly appeared before the City Civil Court till 12th September 2017. It was contended that there is no explanation for the delay of nearly 3 years and the conduct of Applicant is not *bona fide*. To the affidavit-in-reply, is annexed the copy of vakalatnama of Advocate B. D. Chavan, on behalf

of the Defendant No.4 on 2nd March 2010 and the copy of roznama dated 16th September 2017 of the City Civil Court showing the Defendant No.4 being represented by one Advocate Ganesh.

5. An additional affidavit-in-reply came to be filed by the Respondent No.1 on 31st January 2025 annexing the copy of roznama from the year 2014 till the year 2018 and contending that till 2017 the Applicant was represented by an Advocate and the proceedings were subsequently abandoned.

6. In rejoinder to the affidavits filed by Respondent No.1, it is contended that Advocate B.D. Chauhan had been appointed in respect of suit filed in the High Court and after transfer of proceedings to the City Civil Court, he had never instructed any Advocate to appear in the City Civil Court on his behalf. It was contended that the roznama of City Civil Court shows the name of Advocate P.D.Chavan appearing for Defendant No.4, whereas his Advocate was B.D Chauhan. It was further contended that the roznama shows the names of different Advocates on different dates for the Applicant and he had not authorised them to appear on his behalf. It was further contended that roznama of 4th September 2021 shows the name of Advocate Ganesh Singh appearing for the Plaintiff and therefore it cannot be said that Advocate Ganesh was appearing for Defendant No. 4.

7. Learned Counsel appearing for the Applicant has taken this

Court through the pleadings in the Application and would submit that as the knowledge about the passing of impugned judgment and decree dated 16th March 2022 was acquired only on 15th December 2024 from the Respondent No.4, the explanation is sufficient. He would further submit that as Vakalatnama was given only to Mr. B.D. Chavan, the appearances recorded in the roznama of City Civil Court is incorrect recording. He would further submit that the Applicant was unaware of transfer of proceedings to City Civil Court as no notice was received of the transfer and the explanation tendered is sufficient to condone the delay of 2 years 305 days.

8. *Per contra*, learned Counsel appearing for the Respondent No.1 would submit that the Applicant was well aware of the proceedings and had engaged Advocate to represent him which is amply demonstrated from the copy of roznama produced along with the affidavit-in-reply. He would submit that the Plaintiff's affidavit of evidence and compilation of documents was served upon the said Advocate on 24th March 2017 which is recorded in the roznama and that the Advocate continued his appearance till the year 2017 and thereafter for a period of 5 years there was no representation. He submits that it cannot be said that the Applicant was unaware of either the proceedings or the passing of impugned judgment and order. He would further point out the pleadings in Application and

would submit that on one hand the Applicant pleads that he became aware of the impugned judgment and order only on 15th December, 2024 and in the subsequent paragraphs, he has stated that due to Covid pandemic and thereafter he was not aware of the suit proceedings when admittedly Covid pandemic had spread only in the year 2020. He submits that pleadings show that the Applicant was aware of the proceedings and did not participate in the same and the delay cannot be condoned in the absence of any explanation muchless a sufficient explanation.

9. I have considered the submissions and perused the record.

10. The delay which is sought to be condoned is of 2 years and 305 days. Though it is well settled that it is not necessary to explain each and every day's delay, there must be sufficient explanation for the delay. In the present case, the explanation tendered is acquisition of knowledge of the passing of judgment and decree only on 15th December 2024. It is not disputed that the Suit was initially filed before the High Court in which the Applicant was duly served with the summons and he had entered appearance through Advocate Mr. B. D. Chauhan and had filed written statement. In spite thereof, in paragraph 7 of the Application, an incorrect statement has been made that the Applicant did not receive notice/summons regarding any pending proceedings before the Hon'ble High Court of Bombay/Hon'ble City

Civil Court. In the subsequent paragraph 12, it is pleaded that the Applicant had appointed his Advocate to oppose the suit and filed written statement. In paragraph 13, it is pleaded that due to Covid 19 and thereafter he was not aware of the suit proceedings and the passing of the *ex parte* order, which means that after Covid 19 pandemic, he lost track of the matter.

11. The Application is thus replete with contradictory pleadings which raises a doubt about the *bona fide* of Applicant. As appearance was caused through Advocate and written statement was filed, it cannot be disputed that the Applicant was aware of the pendency of proceedings, which were instituted in the year 1999. Even after the suit was transferred to the City Civil Court, it was duty of the Applicant as a litigant to keep himself apprised of the progress of proceedings. The copy of Vakalatnama produced on record shows that Vakalatnama has been filed on 2nd March 2010 and the copy of roznama of 15th March 2014 shows the appearance of Advocate P.D. Chavan for the Applicant. Though learned Counsel appearing for the Applicant would seek to disown the appearance by contending that his Advocate was B. D. Chavan and not P. D. Chavan, it is obviously a typographical error. The fact remains that in the year 2014, the Applicant was duly represented by his Advocate in the City Civil Court and therefore it cannot be said that the Applicant was unaware of the transfer of

proceedings to the City Civil Court. The Applicant was a Director of a limited company and not some rustic villager or illiterate person who is unaware of legal proceedings and is not capable of ensuring that the litigation is duly defended.

12. In the entire Application, there is no pleading as regards the efforts taken by the Applicant to keep in touch with his Advocate and keep himself informed about the progress of suit. The duty of the litigant does not end with the appointment of Advocate and it is also the duty of litigant to give necessary instructions to his Advocate and have constant follow up with his Advocate to ensure that his rights are not prejudiced. Having not done so can only be termed as negligence on part of Applicant. The contention that after the proceedings were transferred to the City Civil Court, he was not represented cannot be countenanced in view of the roznama produced on record which shows appearance on behalf of the Applicant. The proceedings were instituted in the year 1999 and the Applicant had appointed Advocate B.D. Chauhan in the year 2010. At least for the period of 11 years, the Applicant had followed the proceedings and ensured that he was duly represented at least before this Court. The same duty should have continued even thereafter.

13. The pleading in the Application is that Applicant became aware of the impugned judgment and decree on 15th December 2024 and not

that the Applicant was not aware about the transfer of suit proceedings to the City Civil Court. On the contrary, the pleading is that due to Covid-19 pandemic and thereafter he was not aware of the suit proceedings which implies the period subsequent to March 2020.

14. As far as the roznama produced on record along with the affidavit-in-reply is concerned, perusal of the same would indicate that in the year 2014, the present Applicant was represented by Advocate and the appearance continued till the year 2017. The roznama forms part of the judicial record and there is no reason to disbelieve the record. If the roznama did not record the correct position, it was the duty of the Applicant to get the same corrected which has not been done. There is not even a communication addressed by the Applicant to their erstwhile Advocate in order to find out whether his office had represented him in the City Civil Court proceedings.

15. All that the Application pleads is the lack of knowledge of the passing of impugned judgment dated 16th March 2022. It is well settled that for the purpose of condoning delay, it should be demonstrated that there is no negligence or inaction or lack of *bona fide* on the part of Applicant as the law comes to the aid of person who is diligent in pursuing his remedies. In the present case, from the records it is apparent that though the Applicant was well aware of the institution of proceedings as well as the transfer of proceedings to the City Civil

Court, the Applicant was negligent in pursuing the proceedings and giving necessary instructions to his Advocate.

16. In *Pathapati Subba Reddy v. Special Deputy Collector (LA)* [2024 SCC OnLine SC 513] the Apex Court has summarised the law on the aspect of condonation of delay in paragraph 26 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:

(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."

17. In *Esha Bhattacharjee vs Managing Committee of Raghunathpur Nafar Academy [(2013) 12 SCC 649]* the Apex Court has held that the conduct, behaviour and attitude of the party relating to its inaction or negligence are relevant factors to be taken into consideration. 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.

18. The law of limitation is founded on public policy and it is not the duration of the delay but the explanation tendered which deserves consideration. The principle of liberal approach in matters of condonation of delay cannot be stretched to such an extent that where the litigant is evidently negligent and is guilty of inaction, on the bedrock of substantial justice, the delay should be condoned. If the facts of the present case are considered, it is evident that the Applicant was negligent as despite being aware of the pending proceedings did not diligently prosecute the same. In my opinion, it is the Applicant who is guilty of gross negligence and inactive attitude and therefore

the application lacks *bona fide*.

19. It cannot be presumed that no prejudice will be caused to the Respondent and the imposition of costs will justify the delay. The Respondent has succeeded in the Trial Court in the year 2022 in suit which is of the year 1999. Considering the factual position and Applicant has lost the right to have the matter considered on merits by reason of his own negligence and inaction. No help can be taken from the fact that the Appeal of other Defendants has been admitted after condoning delay as neither those orders are placed on record nor it is shown that present Applicant is identically situated.

20. In my view, it is not a fit case to exercise the discretion in favour of the Applicant and to condone the delay of 935 days. Resultantly, the Application stands dismissed.

21. In view of the dismissal of Interim Application, the First Appeal does not survive for consideration and stands dismissed.

[Sharmila U. Deshmukh, J.]