

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 389 OF 2026

Dr. Rakesh Chandra Vemuri ...Petitioner
Versus
Crown Veterinary Services Pvt. Ltd. ...Respondent

Mr. Shanay Shah, a/w Manvendra Kane, Amruta Thakur and
Rashi Oswal, i/b W. S. Kane & Co., for the Petitioner.
Mr. Anosh Sequeira, a/w Karan Fafat, i/b Jani & Parikh, for
the Respondent.

CORAM: N. J. JAMADAR, J.
DATED: 13th JANUARY, 2026

Oral Order:-

1. The challenge in this petition is to an order dated 2nd December, 2025 passed by the City Civil Court, Greater Bombay, whereby a Notice of Motion taken out by the petitioner to condone the delay in filing an affidavit in seeking leave to defend the summary suit came to be dismissed.

2. The Summons for Judgment was served on the Advocate for the defendant on 12th June, 2025. The defendant ought to have applied for leave to defend on or before 22nd June, 2025. However, there was a delay of 44 days in seeking leave and, therefore, the defendant took out Notice of Motion No.5407 of 2025 seeking condonation of delay. It was, *inter alia*, contended

that the defendant could not apply for leave to defend within the stipulated period as he had to collect the information, documents and other supporting material to prepare and file the affidavit in support of leave to defend. Since the defendant resides at Hyderabad, the defendant could not co-ordinate and brief the Advocate, who is based in Mumbai.

3. The prayer for condonation of delay was resisted by the plaintiff. The justifiability of the cause ascribed for the delay was put in contest.

4. By the impugned order, the learned Judge, City Civil Court, was persuaded to dismiss the Notice of Motion observing, *inter alia*, that the proper procedure was to file an application seeking leave to defend alongwith an affidavit and not a Notice of Motion. In the view of the learned Judge, the defendant failed to make out a sufficient case for the condonation of delay.

5. Heard the learned Counsel for the parties.

6. It is trite an application for condonation of delay ought to receive liberal consideration so as to advance the cause of substantive justice. In a suit under Order XXXVII of the Code of Civil Procedure, the timeline prescribed therein has a definite object. Yet, the Court is required to be alive to the

considerations which govern the determination of an application for condonation of delay. The Courts lean in favour of condonation of delay as it promotes determination of the lis on merits rather than on the technicalities, lest the procedure which is a handmaid of justice, does not score a march over substantive justice.

7. 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. Krishnamurthy*¹ wherein the approach to be adopted by the Court in the matter of condonation of delay 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. 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

1 AIR 1998 Supreme Court 3222,

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 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."

(emphasis supplied)

8. In the case at hand, the petitioner claimed that the delay is of 44 days. The learned Counsel for the respondents – plaintiffs submitted that the delay, according to the plaintiff, was of 52 days.

9. In any event, the delay does not appear to be inordinate. The defendant has ascribed justifiable reasons, which prevented him from filing the application for grant of leave to defend, within the stipulated period. In these circumstance to advance the cause of substantive justice, this Court is persuaded to condone the delay in taking out the application seeking leave to defend the summary suit lest the defendant would be deprived of the opportunity to make out a case that he is entitled to defend the suit. At the same time, the inconvenience and delay caused to the plaintiff is required to be compensated by awarding costs.

10. 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 Notice of Motion stands allowed.

- (iv) The delay in filing the affidavit seeking leave to defend stands condoned subject to payment of costs of Rs.25,000/- by the petitioner – defendant to the plaintiffs within a period of one week.
- (v) The payment of costs shall be a condition precedent.
- (vi) Upon payment of costs, the trial Court shall determine the aspect of grant of leave to defend on the basis of the material on record.

The petition stands disposed.

[N. J. JAMADAR, J.]