

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.3428/2016
IN
FIRST APPEAL (ST) NO.16609/2016

Sarala Suresh Kote & Anr.

... Applicants

V/s.

Shrikrishna Narayan Dandavate & Anr.

... Respondents

Mr. S. C. Naidu i/b. Pankaj J. Das for the Applicants

Mr. S. C. Wakankar for Respondent No.1.

Mr. Vinay J. Bhanushali for Respondent No.2.

**CORAM: K.K. TATED &
B. P. COLABAWALLA, JJ.**

DATED : JUNE 22, 2018

PC. :

1 Heard. By this Civil Application the Applicant is seeking to condone the delay of 1 year and 163 days delay in preferring the First Appeal.

2 It is the main contention of the Applicant that because of mistake on the part of their advocate who appeared in the Trial Court the delay caused in preferring the First Appeal. He submits that when the matter was called out in trial court, none appeared on behalf of the Applicant though an advocate was appointed. These facts are stated by the Applicant in paragraph 2 of the Civil Application. Not only that, the advocate for the Applicant has filed an additional affidavit in support of

the Civil Application. He submits that because of mistake on the part of an Advocate a litigant should not suffer. He submits that the Applicant has good chance of success in the matter. He submits that in the interest of justice, this Hon'ble Court be pleased to condone the delay and hear the matter on merits.

3 On the other hand, the learned counsel for the Respondents has vehemently opposed the Civil Application. They submit that the Applicant has failed and neglected to show sufficient cause for condonation of delay of 1 year and 163 days in preferring the First Appeal. Therefore, there is no question of allowing the Civil Application. In support of this contention, they rely on the judgment of the Apex Court in *State of Maharashtra Vs. Ramdas Shrinivas Nayak and Anr. AIR 1982 SC 1249*.

4 It is to be noted that the Apex Court in the matter of *Rafiq and Anr. Vs. Munshilal and Anr. 1981 (2) SCC 788* and *Smt. Lachi Tewari and Ors. Vs. Director of Land Records and Ors. 1984 (Supp) SCC 431* held that because of mistake on the part of an Advocate, a litigant should not suffer.

5 It is to be noted that the Apex Court in the matter of *N.Balkrishnan Vs. M. Krishnamurthy (1998) 7 SCC 123* held that the object of fixing the time limit is not meant to destroy the rights. The law of limitation fixes a lifespan for such legal remedy for the general welfare. Paragraph Nos.11, 12 and 13 of the said judgment read thus :

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 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 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. Kuntal Kumari*, 1969 SC 575 and *State of West Bengal v. The Administrator, Howrah Municipality*, AIR 1972 SC 749.

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.”

6 Considering the above mentioned authorities and the explanation given by the Applicant in the Civil Application as well as the additional affidavit, we are satisfied that the Applicant has made out a case for allowing the Civil Application. At the same time, the Applicant has to pay cost of Rs.50,000/- to each Respondent within two weeks from today, failing which the Civil Application shall stand dismissed without further reference to the court.

7 Hence, following order is passed:

- a. Delay in preferring the First Appeal is condoned.
- b. The Applicant to pay costs of Rs.50,000/- to each Respondent within two weeks from today and place an acknowledgment thereof on record, failing which the Civil Application shall stand dismissed without further reference to the court.
- c. Civil application stands disposed off accordingly.

(B. P. COLABAWALLA, J.)

(K.K. TATED, J.)