



ORDER BELOW EXH. 1 IN Civ. M. A. NO. 1/2018.

CNR-MHKO20000015-2018

1. The present application is made by Vijay Maruti Walvekar (hereinafter referred to as applicant for brevity) against Smt.Ambubai Maruti Walvekar and others (hereinafter referred to as respondents for brevity) for condonation of delay u/s 5 of The Limitation Act caused for making application for restoration of the suit bearing No. R.C.S. No. 133/2017 (Old No. R.C.S.255/2012) It is contended that the said suit was instituted for relief of perpetual injunction and declaration. The said suit was dismissed for want of prosecution by this court on 14-09-2017. For making application of restoration of said suit delay of 92 days is caused. The applicant has not negligent in making the said application belatedly. On the day fixed in the suit, the applicant was ill due fever. Therefore, the plaintiff was absent in the court. Meanwhile, the plaintiff was busy in agricultural work. Therefore, he could not make contact to his advocate. Thereafter, the applicant has made inquiry about the suit and immediately obtained certified copies of order passed this court. As such, in the applicant has not caused delay in the matter purposefully. If, the application is not allowed, rights of the applicant would be affected as the suit is in respect of immovable

property. Ultimately, the applicant prayed for condonation of delay of 92 days caused for making application of restoration of suit bearing R.C.S.No.133/2017.

2. Respondents No. 2 to 7 were served with notice but they have fail to appear this application hence, application proceeded ex-parte against them. Respondent No.8 appeared but he did not file his say to this application.

3. The applicant filed his affidavit of examination-in-chief at Exh. 18 and closed his evidence vide pursis at Exh. 19.

4. From the contentions following points arise for determination. I have recorded findings against each of them as follows:-

Sr.No	Points	Findings
1.	Do delay be condoned ?	Yes.
2.	What order?	As per final order.

REASONS

5. Heard, learned advocates for the applicant and respondent No.8.

6. The suit R.C.S. No. 133/2017 was instituted by the present applicant for partition, injunction and declaration and it came to be dismissed in default on 14/09/2017. As per

arguments of the applicant that he could not attend the date fixed by the court due to illness. After knowledge of said order immediately he obtained certified copies thereof. However, delay of 92 days is caused in making application for restoration of the suit. The said delay is not deliberate. As matter of fact the suit bearing R.C.S.No.133/2017 was instituted in respect of immovable property. Certainly legal rights of the applicant are attached to the the said immovable property.

07. On considering the facts and circumstances, ordinarily in an application for condoning delay, a liberal approach is to be adopted as the rules of limitations are not meant to destroy right of parties but it meant to see that the parties do not resort to dilatory tactics, but seek their remedy promptly, ensure continuation and culmination in an effective adjudication.

08. The law of limitation is a substantive law and as definite consequences on the right an obligation of parties to arise, these principles should be adhered to and applied appropriately depending on the facts and circumstances of a given case.

09. In the present case applicant due to his illness and agricultural work, could not get knowledge of dismissal of suit. Procedure of laws and its effect is normally not known to a lay man. Moreover, delay of 92 days and the reasons known

belatedly by him is just and sufficient cause. The conduct of the applicant even can not be termed to be gross or deliberated negligence latch and willful default.

10. Therefore for adjudicating rights on merit and for fair trial and fair opportunity, application u/s 5 of Limitation Act need to be allowed. In the given circumstances net residue results in to passing the following order.

ORDER

1. The application is allowed.
2. The delay of 92 days is condoned subject to costs of Rs. 500/-to be deposited in the account of Taluka Legal Services Authority of this Court.

Kale-Kherivade
Date : 03/12/2019.

(V.V. Khulape)
Civil Judge, Jr.Dn.,
Kale-Kherivade