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**(2008) 01 BOM CK 0045**  
**In the Bombay High Court**  
**Case No : Writ Petition No. 6905 of 2007**

Shri Suresh Mutha

APPELLANT

Vs

Municipal Corporation

RESPONDENT

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**Date of Decision :** 29-01-2008

**Acts Referred:**

**Citation :** (2008) 3 ALLMR 328 : (2008) 6 BomCR 241 : (2008) 3 MhLj 207

**Hon'ble Judges :** A.H. Joshi, J

**Bench :** Single Bench

**Advocate :** S.R. Deshpande, for the Appellant; P.P. More, for the Respondent

**Final Decision :** Dismissed

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## Judgement

A.H. Joshi, J.—Rule. Rule is made returnable forthwith and is heard by consent.

2. By impugned order delay of about 5 months and 8 days caused in filing of appeal has been condoned by 1st appellate court.

3. The said order is challenged on various grounds inter-alia that:

- a) Delay has not been explained on day to day basis.
- b) Filing of appeal was delayed even after obtaining certified copy.
- c) The Corporation has a Law Department and delay is caused sheerly due to negligence.

4. Learned Advocate for the petitioner has placed reliance on various Judgments namely:

(i) Banarsidas and Ors. v. State of Uttar Pradesh and Ors. reported in 1956 S.C.520.

(ii) P.K. Ramachandran Vs. State of Kerala and Another,

(iii) Sow. Kamalbai Shrimal and Narsaiyya Shrimal Vs. Ganpat Gavare,

(iv) State of Gujarat Vs. Sayed Mohd. Baquir El Edross,

(v) Laxman N. Divekar Vs. State of Maharashtra,

(vi) Municipal Corporation of Ahmedabad Vs. Voltas Limited and Others,

5. In reply learned Advocate for the respondent has urged that it is not a case of dispute between two private parties. It is a case of interest of community being defeated by an individual. Delay on the part of Corporation therefore would not result in creation of a right. On the other hand the order condoning delay has resulted in preventing frustration of interest of community and public at large since the issue pertains to illegal construction on an open space to be required to be so left compulsorily.

6. Upon consideration of the facts of the case, rival submissions and the Judgments relied upon by the petitioner, this Court is of the considered view that larger interests would always out weigh individual claims such as bar of limitation.

7. It is also seen, that the delay has not resulted in creating third party interest.

8. Individual interest and a right allegedly accrued due to bar of limitation would never result in defeating & destroying rights of community. It is well settled preposition of law which still governs the field in that law of limitation is that the bar may take away the remedy, but shall not extinguish a right. Thus by condoning the delay the right has been given a way in preference to alleged wrong.

9. The arguments advanced in opposition are to the challenge in this petition, toto acceptable for the reasons noted above.

10. The precedents relied upon by the petitioner are besides the aspect of the interest of community as against a claim of individual based on a technicality as is very vehemently argued in present petition.

11. Petitioner's rights and claims on merits can still be tested and he may justify on facts rights which he claims, but he ought not escape scrutiny by dodging & denying scrutiny of decree passed in his favour exparte by taking shelter of delay.

12. In the result petition is dismissed. Rule is discharged. Parties shall bear own costs.