



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 12180 OF 2023

Bharat Murlidhar Salunkhe

Petitioner

.. (Orig. Opponent No.1)

Versus

Rekha Hanumant Pawar and Ors.

.. Respondents

-
- Mr. Dilip Bodake, Advocate for Petitioner.
-

CORAM : MILIND N. JADHAV, J.

DATE : OCTOBER 03, 2023.

P.C.:

- 1.** Heard Mr. Bodake, learned Advocate for the Petitioner.
- 2.** The present Writ Petition takes exception to the order dated 28.06.2023 passed by the learned Labour Court, Solapur while disposing Misc. Delay Condonation Application (W.C.A.) No.19 of 2021. The above Application was filed on 08.09.2021 by the Applicants i.e. Respondents herein seeking condonation of delay to restore the disposed of Application WC No.62 of 2015 filed by them under the Workmen's Compensation Act, 1923 (for short "**the said Act**"). Applicants are the legal heirs of the deceased worker Gautam Pawar who had expired while in harness.
- 3.** By order dated 20.10.2018, Application seeking compensation filed by Original Applicants came to be dismissed for

want of prosecution and restoration of the said Application was sought for by the Original Applicants.

4. After reading the impugned judgment which is at Exhibit “G” page No.76 of the Petition with the able assistance of Mr. Bodake, I have perused the Misc. Delay Condonation Application (W.C.A.) No.19 of 2021 filed by the Original Applicants. Paragraph No.2 of the said Application gives as many as six specific reasons on the part of the Applicants for not being able to give instructions to their Advocate. The said Application is in Marathi language which I am well versed with. I have read the same and understood the same. All these reasons stated in paragraph No.2, *prima facie*, appear genuine to me on the face of record which did not enable the Original Applicants to approach their Advocate. Considering these very reasons, the learned Labour Court framed the point for consideration and returned an affirmative finding thereto.

5. Mr. Bodake would submit that the impugned judgment is faulted in view of the fact that the delay of approximately 1049 days (2 years 10 months and 19 days) has not been adequately explained in the Misc. Delay Condonation Application (W.C.A.) No.19 of 2021 by the Applicants and in that view of the matter, the findings returned in paragraph Nos.7 and 9 of the impugned judgment are required to be revisited by this Court.

6. After perusing the findings and the reasons mentioned in the Misc. Delay Condonation Application (W.C.A.) No.19 of 2021, I find that specific reasons have been given by the Applicants. The Applicants cannot be called upon to explain the delay of each day. I do not find any reason to disbelieve the reasons which are stated in paragraph No.2 of the Application nor it is the case of the Petitioner before me and there can be reasons to disbelieve the same. All that Mr. Bodake would argue is that in view of the notice issued by the Court to the Applicants which was replied to by the Advocate for Applicants, *inter alia*, stating that when the Applicants were called upon by the Advocate to give him instructions, they remained absent despite the Advocate sending a letter to them by RPAD and therefore the Advocate sought adjournment before the learned Labour Court by filing his *pursis* dated 07.04.2018. Perusal of the grounds stated in paragraph No.2 of the Application and the *pursis* filed by the Advocate clearly reveal one thing and i.e. in view of the difficulties faced by the Applicants which are enumerated in paragraph No.2 of their Application, there were reasons as to why they could not meet the Advocate. I find that the reasons stated in paragraph No.2 of the Application to cover the period of 2 years and 10 months and 19 days as adequate.

7. Next Mr. Bodake has referred to and relied upon the decision of the Supreme Court in the case of *Majji Sannemma @ Sanyasirao Vs. Reddy Sridevi and Ors.*¹ and has contended that in the said case there was a delay of 1011 days which is more or less similar to the facts in the present case. I have perused the said decision.

8. However it is stated that the facts of the case decided by the Supreme Court and the facts of the present case are materially different.

9. The issue of sufficient cause which has been alluded to by me herein above and which is explained in paragraph No.2 of the Misc. Delay Condonation Application (W.C.A.) No.19 of 2021 filed by the Applicants clearly leaves no room for doubt to disbelieve the Applicants.

10. He has next referred to and relied upon the findings returned by the Supreme Court in paragraph No.6.2 of the above judgment wherein the Supreme Court has not accepted the sufficient explanation given by the concerned party therein to explain the cause for delay for the said period as stated therein.

11. However in the present case as stated by me earlier, I am convinced with the explanation offered by the Applicants in paragraph Nos.2 and 3 of their Application. For convenience and reference, I

¹ Civil Appeal No.7696 of 2021

wish to reproduce the same as stated by them in verbatim and delineate it in English thereafter. Paragraph Nos.2 and 3 read as thus:-

“(२) सदर अर्ज काढून टाकतेवेळी म्हणजे दि.२०/१०/२०१८ रोजी व त्यापूर्वी बराच वेळ अर्जदार ही आजारी होती व लहान मुलगा सुमीत याचे संगोपनाची देखील जबाबदारी अर्जदार हिचेवरच होती. तसेच अर्जदार हिचेबरोबर कोणी दूसरे इसम किंवा जवळचे नातेवाईक उपलब्ध नसतात त्यामुळे अर्जदार हिस मे. कोर्टात हजर होणे अशक्य झाले होते. अर्जदार व्यतिरिक्त अर्जदाराचे घरी अन्य कोणीही व्यक्ती सुमीत याचे संगोपनासाठी नव्हती. त्यामुळे अर्जदाराची शारीरिक व मानसिक स्थिती ढासळली होती व अर्जदार त्यांचे वकीलाशी संपर्क साधून तारखेची माहिती घेवू शकली नाही.

(३) त्याचप्रमाणे अर्जदार हिचे पती अपघातामध्ये मयत झाले असल्यामुळे देखील अर्जदार यांचे संपूर्ण कुटुंब हे दुःखात होते. सबब अशाप्रकारे यातील अर्जदाराच्या संपूर्ण घरावर शोकाकूल वातावरण निर्माण झाले होते व सर्वांची मने ही खिन्न अशी झालेली होती. तसेच अर्जदाराचे मुल हे शिक्षण घेत आहे. त्यामुळे अर्जदारास डब्ल्यु.सी.नं.६२/२०१५ या दाव्यातील कायदेशीर बाबीची पुर्तता करण्यास व पुढील कार्यवाही करण्यास मे.कोर्टात उपस्थित राहाता आले नाही. अर्जदार हिने जाणूनबुजून विलंब केलेला नाही. त्यामुळे मूळ अर्ज पुन्हा फैलावर घेणे अत्यंत आवश्यक व गरजेचे आहे अन्यथा अर्जदार व सामनेवाला नं.१ व २ यांचे कधीही न भरून येणार असे नुकसान होणार आहे. सबब डब्ल्यु.सी.नं.६२/२०१५ चा अर्ज पुन्हा फैलावर घेणेसाठी दिलेला आहे. त्याकामी सदरचा अशीर माफीचा अर्ज.”

12. I shall now delineate the specific reasons as stated by the Applicants in the above paragraphs. The cause tittle of the Petition even today shows that one of the Applicant is a minor. The first reason given by the Applicant No.1 is that the minor son and she herself were unwell and she was required to take care of her minor son. The second reason offered is that the Applicant herself being the widow of deceased was required to take care of herself as there was no relative with her during the interregnum / interim period. In that view of the matter, the Original Applicant No.1 i.e. wife of the deceased employee was not in a position to leave her minor son who was 7 old at home alone and therefore she was handicapped. It is

further stated that her physical and mental condition was not proper and that was one more reason. This was mainly due to the fact that the husband of the Applicant No.1 (deceased) had met with an untimely accident and that he was the sole earning member / bread winner of the family and in view thereof the entire family was in turmoil at the then time. She has further stated that her only child i.e. Applicant No.2 was taking education and he was about 6-7 years old at that time. I am therefore convinced with the reasons given and the findings returned by the learned Labour Court. In view of the facts of the present case being clearly distinguishable from the facts of the case cited by Mr. Bodake, I am not inclined to accept Mr. Bodake's submission.

13. It will be appropriate to consider the guidelines for seeking condonation of delay as laid down by the Supreme Court in the case of *Esha Bhattacharjee Vs. Managing Committee of Raghunathpur Nafar Academy and Ors.*² on the the basis of the law laid down by earlier decisions of the Supreme Court and further enumerating additional guidelines in that context. Paragraph Nos.15 and 16 of the above judgment are relevant and can be referred to for considering the Application for condonation of delay in the present case also. The guidelines and additional guidelines stated therein read as under:-

² (2013) 12 SCC 649

“15.

- (i) *There should be a liberal, pragmatic, justice-oriented, non-pedantic approach while dealing with an application for condonation of delay, for the courts are not supposed to legalise injustice but are obliged to remove injustice.*
- (ii) *The terms “sufficient cause” should be understood in their proper spirit, philosophy and purpose regard being had to the fact that these terms are basically elastic and are to be applied in proper perspective to the obtaining fact-situation.*
- (iii) *Substantial justice being paramount and pivotal the technical considerations should not be given undue and uncalled for emphasis.*
- (iv) *No presumption can be attached to deliberate causation of delay but, gross negligence on the part of the counsel or litigant is to be taken note of.*
- (v) *Lack of bona fides imputable to a party seeking condonation of delay is a significant and relevant fact.*
- (vi) *It is to be kept in mind that adherence to strict proof should not affect public justice and cause public mischief because the courts are required to be vigilant so that in the ultimate eventuate there is no real failure of justice.*
- (vii) *The concept of liberal approach has to encapsule the conception of reasonableness and it cannot be allowed a totally unfettered free play.*
- (viii) *There is a distinction between inordinate delay and a delay of short duration or few days, for to the former doctrine of prejudice is attracted whereas to the latter it may not be attracted. That apart, the first one warrants strict approach whereas the second calls for a liberal delineation.*
- (ix) *The conduct, behaviour and attitude of a party relating to its inaction or negligence are relevant factors to be taken into consideration. It is so as the fundamental principle is that 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.*
- (x) *If the explanation offered is concocted or the grounds urged in the application are fanciful, the courts should be vigilant not to expose the other side unnecessarily to face such a litigation.*
- (xi) *It is to be borne in mind that no one gets away with fraud, misrepresentation or interpolation by taking recourse to the technicalities of law of limitation.*
- (xii) *The entire gamut of facts are to be carefully scrutinized*

and the approach should be based on the paradigm of judicial discretion which is founded on objective reasoning and not on individual perception.

(xiii) The State or a public body or an entity representing a collective cause should be given some acceptable latitude.

16. *To the aforesaid principles we may add some more guidelines taking note of the present day scenario. They are:-*

- (a) An application for condonation of delay should be drafted with careful concern and not in a half hazard manner harbouring the notion that the courts are required to condone delay on the bedrock of the principle that adjudication of a lis on merits is seminal to justice dispensation system.*
- (b) An application for condonation of delay should not be dealt with in a routine manner on the base of individual philosophy which is basically subjective.*
- (c) Though no precise formula can be laid down regard being had to the concept of judicial discretion, yet a conscious effort for achieving consistency and collegiality of the adjudicatory system should be made as that is the ultimate institutional motto.*
- (d) The increasing tendency to perceive delay as a non-serious matter and, hence, lackadaisical propensity can be exhibited in a non-challant manner requires to be curbed, of course, within legal parameters.”*

14. In the facts of the present case justice needs to be done and a liberal approach therefore needs to be taken. This is so because in the present case Respondents had sufficiently explained the cause for delay in their Application.

15. I therefore agree with the cogent and correct findings returned by the learned Labour Court in paragraph No.8 which are relevant and reproduced herein under:-

*“8. Advocate of respondent no.1 relied on **Maji Sannemma @ Sanyasirao v/s Reddy Sridevi & Ors.** (C.A. 7696/2021) (Hon’ble*

*Supreme Court). I have gone through the case law. Hon'ble Supreme Court has observed that concerned party has not submitted proper or sufficient explanation about the delay, hence refused to condone the delay. In the said case law delay condonation application was preferred in respect of second appeal arising out of a civil suit. Whereas, present litigation is about compensation on account of accidental death during employment. The civil suit was decided on merits and there was delay to prefer appeal, whereas in present matter the application came to be dismissed for want of prosecution and there is delay to prefer restoration application. Nature of present litigation is quiet beneficial and proceeding is before Commissioner for Employees Compensation. In E. C. Act there is no specific provision to condone the delay to prefer restoration application and present application is filed using provision of Limitation Act. Claim of applicants was not decided on merits and their prayer to allow restoration application and try the matter on merit cannot be said to be unjustified. In such circumstances, I am of opinion that applicants should get opportunity to contest the matter on merit. At the same time respondent no. 1 will also get the chance to defend the case Hon'ble Supreme Court in **Collector Land Acquisition, Anantnag & Anr. V/s Mst. Katiji & Ors.** (1987 AIR 1353) has observed that, There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala fides. A litigant does not stand to benefit by resorting to delay. It must be grasped that judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so."*

16. In view of the above, I therefore see no reason to interfere with the findings returned by the learned Labour Court and the impugned judgment does not call for any interference whatsoever. The judgment dated 28.06.2023 is sustained.

17. Writ Petition is dismissed.

[MILIND N. JADHAV, J.]

Ajay