

*Harish*

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

**CIVIL APPLICATION NO.458 OF 2020  
IN  
SECOND APPEAL (ST) NO.21778 OF 2019**

Vijay Badridas Bairagi @  
Vijay Bansidas Bairagi ...Applicant/Appellant

Versus  
Shri. Sanjay Vishnudas Bairagi & Ors. ...Respondents

Mr. Rahul D. Motkari, for the Applicant/Appellant.

Ms. Pranita P. Hingmire, for the Respondent Nos. 1, 2, 4A, to  
4C & 5.

**CORAM : MADHAV J. JAMDAR, J.  
DATE : 1<sup>st</sup> MARCH, 2023**

**P.C.:**

1. Heard Mr. Rahul D. Motkari, learned counsel appearing for the Applicant and Ms. Hingmire, learned counsel appearing for the Respondent Nos. 1, 2, 4A to 4C & 5.

2. The Civil Application is taken out for condonation of delay of 466 days in filing the Second Appeal. The impugned Judgment and Decree of the learned First Appellate Court is dated 2<sup>nd</sup> January, 2018. The Applicant applied for the certified copy of the same on 5<sup>th</sup> January, 2018 and the certified copy was ready on 23<sup>rd</sup> January, 2018 and received by the Applicant on 2<sup>nd</sup> February, 2018. The reasons given for condonation of delay are in

paragraph Nos. 11 and 12 of the Civil Application, which reads as under :

“11. The Applicant is a person of small means living in a small village. He does not have any regular source of income and is a poor man and is in financial hardhsip. The Applicant is presently doing the job of a driver. The Applicant has to shoulder the entire responsibility of his son and daughter who are taking education. The Applicant is also looking after his amother in law who is mentally unsound and under medical treatment.

12. The Applicant was short of funds for the filing of the Appeal. Still he somehow arranged for the funds to file the Appeal and has thus filed the Appeal in this Hon’ble Court without any further delay. The Applicant state that he is unaware of the legal niceties and also had to arrange for the money to file the appeal.”

3. The dates on which the impugned Judgment and Decree was passed and the certified copy was applied on, clearly shows that the Applicant is deligent. The Applicant in the delay condonation application stated that, he is staying in a small village and he does not have any regular source of income. He is doing the job of driver and has to shoulder the responsibility of his son and daughter who are taking education. He also stated that, he has to look after his mother-in-law who is mentally unsound and under medical treatement.

4. Affidavit in reply dated 10<sup>th</sup> August, 2022 is filed by Respondent No. 1 to oppose the present Civil Applicantion. However, it is significant to note, that the details of finacial

hardships which the Applicant has set out in paragraph No. 11 and 12 are not specifically denied by the Respondents. It is only contended that, the Court fee is of only Rs. 600/- and therefore, there can not be delay in filing Appeal due to financial hardship and the said reason is not the genuine reason. However, for filing Appeal apart from Court fee, other expenses, professional charges are also required. Therefore, there is no substance in the contentions raised by the Respondents in the affidavit-in-reply.

5. Ms. Hingmire, learned counsel appearing for the Respondents has relied on certain Judgments of Supreme Court. She relied on the judgment in the matter of **Ajay Dabra Vs. Pyare Ram & Ors**<sup>1</sup> and particularly in paragraph No. 10 of the said judgment. The said paragraph No. 10 reads as under :-

“10.This Court, while emphasizing the scope of Section 5 of the limitation Act, in the case of Mahant Bikram Dass Chela versus Financial Commissioner, Revenue, Punjab, Chandigarh and Others, (1977) 4 SCC 69 has held :

“21. Section 5 of the Limitation Act is a hard task-master and judicial interpretation has encased it within a narrow compass. A large measure of case-law has grown around Section 5, its highlights being that one ought not easily to take away a right which has accrued to a party by lapse of time and that therefore a **litigant who is not vigilant about his rights must explain every day's delay**. These and similar considerations which influence the decision of Section 5 applications are out of

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<sup>1</sup> 2023 SCC Online SC 92.

place in cases where the appeal itself is preferred within the period of limitation but there is an irregularity in presenting it. Thus, in the instant case, there was no occasion to invoke the provisions of Section 5, Limitation Act, or of Rule 4, Chapter I of the High Court Rules. If the Division Bench were aware that Rule 3 of Chapter 2-C is directory, it would have treated the appeal as having been filed within the period of limitation, rendering it inapposite to consider whether the delay caused in filing the appeal could be condoned.”

This Court in the case of Basawraj and Another versus Special land Acquisition Officer, (2013) 14 SCC 81 while rejecting an application for condonation of delay for lack of sufficient cause has concluded in paragraph 15 as follows :

“15. The law on the issue can be summarised to the effect that where a case has been presented in the court beyond limitation, **the applicant has to explain the court as to what was the “sufficient cause” which means an adequate and enough reason which prevented him to approach the court within limitation.** In case a party is found to be negligent, or for want of bona fide on his part in the facts and circumstances of the case, or found to have not acted diligently or remained inactive, **there cannot be a justified ground to condone the delay.** No court could be justified in condoning such an inordinate delay by imposing any condition whatsoever. The application is to be decided only within the parameters laid down by this Court in regard to the condonation of delay. In case there was no sufficient cause to prevent a litigant to approach the court on time condoning the delay without any justification, putting any condition whatsoever, amounts to passing an order in violation of the statutory provisions and it tantamounts to showing utter disregard to the legislature.”

Therefore, we are of the considered opinion that the High Court did not commit any mistake in dismissing the delay condonation application of the present appellant.”

(Emphasis added)

6. However, in the facts and circumstance of this case, this Court has already found that the present Applicant is diligent and he could not file the Appeal within time due to severe economic constraints. It is significant to note that, the Respondents have not denied that the Applicant is residing in a small village, the Applicant is working as a driver, the Applicant has to shoulder responsibility of his school going children and his mother-in-law is not well and therefore, the observations of the Supreme Court in paragraph No. 10 are not applicable to the present case. This is not a case where the Applicant is negligent or his conduct is mala fide.

7. Ms. Hingmire, learned counsel for the Respondents has also relied on Judgment of Supreme Court in the case of **Lingeswaran Vs. Thirunagalingam**<sup>2</sup>. She relied on paragraph No. 5 of the said Judgment. The said paragraph No. 5 reads as under :-

“5. We are in complete agreement with the view taken by the High Court. Once **it was found even by the learned trial Court that delay has not been properly explained and even there are no merits in the application for condonation of delay**, thereafter, the matter should rest there and the condonation of delay application was required to be dismissed. **The approach adopted by the**

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<sup>2</sup> Special Leave to appeal (C)Nos. 2054-2055 of 2022.

learned trial Court that, even after finding that, in absence of any material evidence it cannot be said that the delay has been explained and that there are no merits in the application, still to condone the delay would be giving a premium to a person who fails to explain the delay and who is guilty of delay and laches. At this stage, the decision of this Court in the case of Popat Bahiru Goverdhane vs. Land Acquisition officer, (2013) 10 SCC 765 is required to be referred to. In the said decision, it is observed and held that the law of limitation may harshly affect a particular party but it has to be applied with all its rigour when the statute so prescribes. The court has no power to extend the period of limitation on equitable grounds. The statutory provisions may cause hardship or inconvenience to a particular party but the court has no choice but to enforce it giving full effect to the same.”

(Emphasis added)

The Supreme Court has observed that the Trial Court in that case has observed that there are no merits in the delay condonation application still the delay was condoned. In this case sufficient reasons are given and therefore, the said decision of the Supreme Court is not applicable to the present case.

8. Ms. Hingmire, learned Counsel for the Respondents also relied on Judgment of **Majji Sannemma @ Sanyasirao Vs. Reddy Sridevi & Ors.**<sup>3</sup>. She relied on paragraph No. 6.2. of the said judgment. The said paragraph No. 6.2 reads as under :

“6.2 We have gone through the averments in the application for the condonation of delay. **There is not sufficient explanation for the period from 15.03.2017 till**

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3 2021 SCC Online (SC) 1260.

**the Second Appeal was preferred in the year 2021.** in the application seeking condonation of delay it was stated that she is aged 45 years and was looking after the entire litigation and that she was suffering from health issues and she had fallen sick from 01.01.2017 to 15.03.2017 and she was advised to take bed rest for the said period. **However, there is no explanation for the period after 15.03.2017. Thus, the period of delay from 15.03.2017 till the Second Appeal was filed in the year 2021 has not at all been explained.** Therefore, the High Court has not exercised the discretion judiciously.”

(Emphasis added)

Thus, the Supreme Court has come to the conclusion in the above case that, there is no sufficient explanation for a period of about four years in filing the Appeal. In this case adequate explanation is given. Therefore, the said Judgment is not applicable to the facts of the present case.

9. Ms. Hingmire also relied on Judgment of Supreme Court in **University of Delhi Vs. Union of India & Ors.**<sup>4</sup>. She relied on paragraph Nos. 20 and 21 of the said decision. The said paragraph Nos. 20 and 21 reads as under :

**“20.** From a consideration of the view taken by this Court through the decisions cited supra the position is clear that, **by and large, a liberal approach is to be taken in the matter of condonation of delay.** The consideration for condonation of delay would not depend on the status of the party namely the Government or the public bodies so as to apply a different yardstick but the **ultimate consideration should be to render evenhanded justice to the parties.** Even in such case the condonation of long

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4 (2020) 13 SCC 745

delay should not be automatic since the accrued right or the adverse consequence to the opposite party is also to be kept in perspective. In that background while considering condonation of delay, the routine **explanation would not be enough but it should be in the nature of indicating "sufficient cause" to justify the delay which will depend on the backdrop of each case and will have to be weighed carefully by the Courts based on the fact situation.** In the case of Katiji (Supra) the entire conspectus relating to condonation of delay has been kept in focus. However, what cannot also be lost sight is that the consideration therein was in the background of dismissal of the application seeking condonation of delay in a case where there was delay of four days pitted against the consideration that was required to be made on merits regarding the upward revision of compensation amounting to 800 per cent.

**21. As against the same, the delay in the instant facts in filing the LPA is 916 days and as such the consideration to condone can be made only if there is reasonable explanation and the condonation cannot be merely because the appellant is public body. The entire explanation noticed above, depicts the casual approach unmindful of the law of limitation despite being aware of the position of law. That apart when there is such a long delay and there is no proper explanation,** laches would also come into play while noticing as to the manner in which a party has proceeded before filing an appeal. In addition in the instant facts not only the delay and laches in filing the appeal is contended on behalf of the respondents seeking dismissal of the instant appeal but it is also contended that there was delay and laches in filing the writ petition itself at the first instance from which the present appeal had arisen. In that view, it would be necessary for us to advert to those aspects of the matter and notice the nature of consideration made in the writ petition as well as the LPA to arrive at a conclusion as to whether the High Court was justified.

(Emphasis added)

In the above case, the Supreme Court has held that liberal approach is required to be taken in the matter of condonation of delay and ultimate consideration must be that evenhanded justice is rendered to the parties. The said observations of the Supreme Court are in fact supporting the case of the Applicant. Apart from that in the present case proper and sufficient explanation is given.

10. Therefore, there is no substance in the contentions raised by the Respondents. The Civil Application is allowed in terms of prayer clause (a).

11. The Civil application is disposed of in above terms with no order as to costs.

**(MADHAV J. JAMDAR, J.)**