

IN THE HIGH COURT OF JUDICATURE OF BOMBAY,
BENCH AT AURANGABAD

WRIT PETITION NO. 2116 OF 2015

Dilip Ramdas Patil (dead)
through Legal heirs & others ... Petitioners

Versus

Arunabai Khemchand Patil
& another ... Respondents

.....
Mr. N.B. Suryawanshi , Advocate holding for
Mr. A.V. Patil for petitioners

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CORAM : RAVINDRA V. GHUGE, J.

DATED : 3rd MARCH, 2015

PER COURT :

1. The petitioner is aggrieved by the order dated 12-12-2014 passed by the Appeal Court in Civil Misc. Application No. 102 of 2012 by which the delay of two years and twenty five days caused in preferring an appeal against the judgment and decree dated 26-07-2010 passed in Special Civil No. 58 of 2013, has been condoned.

2. The petitioner submits that the Misc. Application preferred by the applicants does not set out any specific grounds which would justify the delay caused in preferring the appeal. It is stated

in the application that the Advocate for the plaintiffs did not convey the fact of the dismissal of the suit by judgment dated 26-07-2010. The original defendants approached the suit site and because of their appearance, the applicants came to know that their suit has been dismissed.

3. The petitioners further submit that the other ground set out in the application was as regards the illness of one of the applicants for a period of one year. Contention is that the applicants have not supported the reasons set out in the application with any evidence which could have convinced the Appeal Court to condone the delay.

4. The petitioners further submit that though delay condonation application has to be considered liberally, the instant case is one such example wherein there is neither any convincing reason set out, nor has any evidence been brought on record so as to justify the impugned order.

5. I have considered the submissions of the petitioners in the light of the documents on record. The application for condonation of delay indicates that two grounds have been set out for seeking condonation of delay, as has been pointed out by the petitioners.

The Trial Court has considered that the concerned Advocate of the plaintiffs appears to have failed to inform them about the dismissal of the suit. The ground of illness was sought to be supported by producing a medical certificate on record, which, in the submissions of the petitioners, was not proved by examining the Doctor who had purportedly treated one of the applicant. The Appeal Court has however, come to a conclusion that the valuable right of the appeal would be lost, if the delay was not condoned.

6. From the above, I do not find that the delay could be termed as inordinate. The original plaintiff gained no advantage by delaying the appeal. In fact, the plaintiffs find themselves in a precarious situation on account of the delay having been caused in preferring the appeal.

7. The Apex Court in the case of *the Collector, Land Acquisition Anantnag and another V/s. Mst. Katiji and others*, reported at AIR 1987 S.C.1353, has held as under :-

“ 3. The legislature has conferred the power to condone delay by enacting S. 51 of the Indian Limitation Act of 1963 in order to enable the Courts to do substantial justice to parties by disposing of matters on 'merits'. The expression "sufficient cause" employed by the legislature is adequately elastic to enable the Courts to apply the law in a meaningful manner which subserves the ends of justice that being the life-purpose for the existence of the institution of Courts. It is common knowledge that this Court has been making a justifiably liberal approach in matters, instituted in this Court.

But the message does not appear to have percolated down to all the other Courts in the hierarchy. And such a liberal approach is adopted on principle as it is realized that :-

1. Ordinarily a litigant does not stand to benefit by lodging an appeal late.
 2. Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this when delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties.
 3. "Every day's delay must be explained" does not mean that a pedantic approach should be made. Why not every hour's delay. every second's delay ? The doctrine must be applied in a rational common sense pragmatic manner.
 4. When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay.
 5. 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. In fact he runs a serious risk.
 6. 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."
8. The Appeal Court while condoning the delay has imposed costs of Rs. 5,000/- upon the plaintiffs. Taking an over all view of the matter and in view of the ratio laid down by the Hon'ble supreme Court in the *Collector Land Acquisition Anantnag* case (supra). I do not find that the impugned order could be termed as

perverse or erroneous so as to cause grave injustice to the petitioners.

9. In the light of the above, the petition is therefore, dismissed.

(**RAVINDRA V. GHUGE, J.**)