

IN THE HIGH COURT OF JUDICATURE OF BOMBAY  
BENCH AT AURANGABAD

WRIT PETITION NO.8635 OF 2014

THE SECRETARY,  
SMT.VITHABAI SHIKSHAN PRASARAK MANDAL,  
AND ANOTHER

PETITIONERS

VERSUS

SHIVAJI MOHANRAO PATIL AND  
ANOTHER

RESPONDENTS

Mr.A.B.Shinde, Advocate for the petitioners.

( CORAM : RAVINDRA V. GHUGE, J.)  
DATE : 22/07/2015

PER COURT :

1. The petitioners are aggrieved by the order dated 24/07/2014, passed by the School Tribunal, Latur, by which the delay of 205 days in filing the appeal, has been condoned by imposing costs of Rs.2,000/-.

2. The petitioners submit that respondent No.1 had filed an Appeal No.36/2013 before the School Tribunal assailing the cause of action of forceful resignation. The said appeal was dismissed as being untenable by order dated 21/12/2013. Respondent No.1 has then filed an appeal in 2014 alongwith the application for condonation of delay.

3. Grievance is that the second appeal in the same cause could not have been filed by respondent No.1 and the same should not have been entertained by the School Tribunal. He further submits that the delay caused is not properly explained and hence the impugned order, condoning the delay, deserves to be quashed and set aside.

4. I have considered the submissions of the petitioners. Respondent No.1 had indeed filed Appeal No.36/2013 before the School Tribunal. The petitioners herein moved an application indicating that the appeal was filed prematurely in apprehension of reversion. It was contended that an appeal cannot be entertained on apprehension. It was, therefore, prayed that the appeal be dismissed since it was not maintainable.

5. Respondent No.1 was the Head Master. His forceful resignation rendered him a teacher. He challenged his removal as Head Master, by Appeal No.36/2013.

6. By the order dated 21/12/2013, the School Tribunal considered the rival submissions and concluded that the appeal was filed on 03/09/2013 and the order of reversion is passed on 25/09/2013, which was not assailed in the appeal. The forceful

resignation alleged by the employee is dated 19/06/2013 and therefore the appeal suffers from delay. It was, therefore, concluded by the School Tribunal as follows :-

*"It is worth to mention here that the appellant did not counted the delay occasioned in preferring the present appeal. The application for condonation of delay is not filed. Not only this, the appellant did not prayed in the original appeal memo about condonation of the delay caused in preferring the present appeal. Consequently, in absence of the delay condonation application and the pleadings about the delay caused in the appeal alongwith sufficient cause for the delay I hold that the present appeal as such is not maintainable. So it requires to be dismissed. However, although, it is so, but for the above technical defect the grievance of appellant should not be left unredressed. Under the circumstances, I found it is desirable to grant liberty to the appellant to file afresh appeal with proper pleading and explaining the delay with prayer for condonation of delay, so as to entertain the appeal. In result, I proceed to pass the following order.*

**ORDER**

1. *The application Exh-14 stands allowed.*
2. *The appeal stands dismissed as not maintainable.*
3. *The appellant is granted liberty to file afresh appeal in accordance with the M.E.P.S. Act and Rule, for discussion made supra in the body of order.*
4. *No order as to costs.*
5. *Proceeding closed."*

7. The School Tribunal, therefore, granted liberty to respondent No.1 to file a proper appeal by raising all contentions and grounds and also file an application for condonation of delay.

8. Pursuant to the above order, respondent No.1 preferred an appeal alongwith Misc.Appl. No.1/2014 seeking condonation of delay. Same has been condoned by the impugned order. It is trite law that while considering the application for condonation of delay, a liberal approach is to be adopted in the event there are no laches attributable to the applicant and the delay is not inordinate.

9. I have, in the matter of Popat Ramchandra Daobhat and others Vs. Kisan Dhondiba Kaware and others in CA No.2772/2014 in S.A.St.No.6881/2014, delivered a judgment dated 24/04/2015 with regard to condonation of delay. The observations of this Court are as under in paragraph Nos.15, 16, 19 to 22 read as under :-

“15            *It is a settled law that delay of each day is not to be explained. A pedantic approach is not to be adopted while considering the delay caused, unless laches can be attributed or are attributable to the conduct of a litigant.*

16            *The Honourable Supreme Court in the case of*

Collector, Land Acquisition, Anantnag v/s Katiji, reported in AIR.

1987 SC 1353, has observed in paragraph 3 as follows :-

“3. The legislature has conferred the power to condone delay by enacting Section 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:-

"Any appeal or any application, other than an application under any of the provisions of Order XXI of the Code of Civil Procedure, 1908 may be admitted after the prescribed period if the appellant or the applicant satisfies the court that he had sufficient cause for not preferring the appeal or making the application within such period."

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.*

*Making a justice-oriented approach from this perspective, there was sufficient cause for condoning the delay in the institution of the appeal. The fact that it was the State which was seeking condonation and not a private party was altogether irrelevant. The doctrine of equality before law demands that all litigants, including the State as a litigant, are accorded the same treatment and the law is administered in an even handed manner. There is no warrant for according a stepmotherly treatment when the State is the applicant praying for condonation of delay. In fact experience shows that on account of an impersonal machinery (no one in charge of the matter is directly hit or hurt by the judgment sought to be subjected to appeal) and the inherited bureaucratic methodology imbued with the note-making, file pushing, and passing-on-the-buck ethos, delay on its part is less difficult to understand though more difficult to approve. In any event, the State which represents the collective cause of the community,*

*does not deserve a litigant-non-grata status. The Courts therefore have to be informed with the spirit and philosophy of the provision in the course of the interpretation of the expression "sufficient cause". So also the same approach has to be evidenced in its application to matters at hand with the end in view to do even-handed justice on merits in preference to the approach which scuttles a decision on merits. Turning to the facts of the matter giving rise to the present appeal, we are satisfied that sufficient cause exists for the delay. The order of the High Court dismissing the appeal before it as time barred, is therefore, set aside. Delay is condoned. And the matter is remitted to the High Court. The High Court will now dispose of the appeal on merits after affording reasonable opportunity of hearing to both the sides."*

19            *The Honourable Supreme Court in several decisions has concluded that the delay must be looked at liberally so as to ensure that the remedy in law is not deprived to a litigant on the ground of technical objections. If the reasons are acceptable and substantially explain the delay, then, the reasons cited could be accepted.*

20            *The Honourable Supreme Court in Sital Prasad Saxena v/s Union of India reported in **AIR 1985 SC 1** (three Judges), has observed in paragraphs 6 and 8 as under :-*

*"6. We heard Mr. S.S. Khanduja, learned counsel for the appellants and Mr. G.D. Gupta, learned counsel for the respondents. Approach to the applications seeking condonation of delay in moving the application for substitution of parties who died during the pendency of civil*

*appeal in the High Court has to be as observed by this Court in Bhagwan Swaroop v. Moolchand and Hans Raj v. Sunder Lal Aggarwal. In the present case the High Court unfortunately committed an error in rejecting the application for condoning the delay. It is the High Court which had to satisfy itself that the petitioner made out sufficient cause which prevented him from moving the application for substitution in time and not the trial Court. The High Court may call for report of the trial Court but then cannot adopt the approach of a court exercising revisional jurisdiction. It must examine the material collected by the trial Court and come to its own conclusion. In this case the High Court observed that it was not persuaded to take a view different from the one taken by the trial Court. This is impermissible. The second error was that once an appeal is pending in the High Court, the heirs are not expected to keep a constant watch on the continued existence of parties to the appeal before the High Court which has a seat far away from where parties in rural areas may be residing. And in a traditional rural family the father may not have informed his son about the litigation in which he was involved and was a party. Let it be recalled what has been said umpteen times that rules of procedure are designed to advance justice and should be so interpreted and not to make them penal statutes for punishing erring parties.*

8. *Having heard learned counsel on either side we are satisfied that both the trial court as well as the High Court were in error in not condoning the delay in seeking substitution of heirs and legal representatives of the deceased/appellant in time. Cause for delay as urged appears to us*

to be sufficient which prevented them from moving the petition for substitution. We are satisfied that sufficient cause was made for condoning the delay. Accordingly, we first set aside the order passed in I.A. No.5745 of 1978 under section 5 of the Limitation Act seeking condonation of delay and grant the same. We set aside the order disposing of the appeal having abated and set aside the abatement. We condone the delay in seeking substitution and grant substitution. Accordingly, the heirs and legal representatives who applied for substitution in place of the deceased-appellant are directed to be brought on record. The appeal succeeds to this extent and is allowed and the orders of the High Court herein above set out are set aside and the matter is remitted to the High Court for disposal in the light of the observations made herein. Since the matter is an old one the High Court may dispose of it as expeditiously as possible. There will be no order as to costs. The appeal is disposed of accordingly.”

21 Further, the Honourable Supreme Court in the case of *State of Haryana v/s Chandra Mani* reported in **AIR 1996 SC 1623** (three judges), has observed as under:-

“11. It is notorious and common knowledge that delay in more than 60 per cent of the cases filed in this Court - be it by private party or the State - are barred by limitation and this Court generally adopts liberal approach in condonation of delay finding somewhat sufficient cause to decide the appeal on merits. It is equally common knowledge that litigants including the State are accorded the same treatment and the law is administered in an even-handed manner. When the State is an applicant, praying for condonation of delay, it is

common knowledge that on account of impersonal machinery and the inherited bureaucratic methodology imbued with the note-making, file-pushing, and passing-on-the-buck ethos, delay on the part of the State is less difficult to understand though more difficult to approve, but the State represents collective cause of the community. It is axiomatic that decisions are taken by officers/agencies proverbially at slow pace and encumbered process of pushing the files from table to table and keeping it on table for considerable time causing delay intentional or otherwise - is a routine. Considerable delay of procedural red tape in the process of their making decision is a common feature. Therefore, certain amount of latitude is not impermissible. If the appeals brought by the State are lost for such default no person is individually affected but what in the ultimate analysis suffers, is public interest. The expression "sufficient cause" should, therefore, be considered with pragmatism in justice-oriented approach rather than the technical detection of sufficient cause for explaining every day's delay. The factors which are peculiar to and characteristic of the functioning of the Governmental conditions would be cognizant to and requires adoption of pragmatic approach in justice-oriented process. The Court should decide the matters on merits unless the case is hopelessly without merit. No separate standards to determine the cause laid by the State vis-a-vis private litigant could be laid to prove strict standards of sufficient cause. The Government at appropriate level should constitute legal cells to examine the cases whether any legal principles are involved for decision by the courts or whether cases require adjustment and should authorise the officers to take a decision or give

*appropriate permission for settlement. In the event of decision to file appeal needed prompt action should be pursued by the officer responsible to file the appeal and he should be made personally responsible for lapses, if any. Equally, the State cannot be put on the same footing as an individual. The individual would always be quick in taking the decision whether he would pursue the remedy by way of an appeal or application since he is a person legally injured while State is an impersonal machinery working through its officers or servants. Considered from this perspective, it must be held that the delay of 109 days in this case has been explained and that it is a fit case for condonation of the delay.”*

22                    *In State of West Bengal v/s Administrator, Howrah Municipality reported in **AIR 1972 SC 749**, the Honourable Supreme Court in paragraph 26 has observed as under:-*

*“26. The legal position when a question arises under S. 5 of the Limitation Act is fairly well-settled. It is not possible to lay down precisely as to what facts or matters would constitute "sufficient cause" under S. 5, of the Limitation Act. But it may be safely stated that the delay in filing an appeal should not have been for reasons which indicate the party's negligence in not taking necessary steps, which he could have or should have taken. Here again, what would be such necessary steps will again depend upon the circumstances of a particular case and each case will have to be decided by the courts on the facts and circumstances of the case. Any observation of an illustrative circumstance or fact, will only tend to be a curb on the free exercise of the judicial mind by the Court in determining whether the facts and*

*circumstances of a particular case amount to "sufficient cause" or not. It is needless to emphasis that courts have to use their judicial discretion in the matter soundly in the interest of justice."*

10. So also, I have, in the matter of Sarpanch Gram Panchayat Shelgaon, Jalna and others Vs. Panditrao Bhauduji Sonwane in WP No.5774./2015, delivered an order on a similar issue on 15/06/2015.

My observations in paragraph Nos. 8 and 10, read as under :-

*"8. The test of condoning delay is primarily based upon whether the concerned litigant could have derived any advantage by delaying the institution of his complaint before the Labour Court. It needs to be considered whether he has any remedy available, whether he would be rendered remediless in the event the delay is not condoned and whether the delay could be branded as inordinate and does not deserve to be condoned. It also needs scrutiny as to whether laches are attributable to the litigant seeking condonation of delay.*

*10. It is crystallized law that a Court ought not to take a pedantic approach in dealing with the applications seeking condonation of delay. The respondent/workman was served with order of suspension dated 21/01/2011. He preferred complaint (ULP) No.10/2012 before the Industrial Court on 27/01/2012. He had prayed for quashing and setting aside of the order of suspension. The petitioners*

*herein filed their written statement on 07/03/2012 clearly stating therein that the charges levelled upon the workman are grave and serious and therefore he was terminated as per section 61 of the Maharashtra Village Panchayat Act. This complaint was withdrawn by the respondent/workman on 06/08/2012.”*

11. In the light of the above and the observations of the School Tribunal in its judgment dated 21/12/2013 referred to above, I do not find that the impugned order could be termed as perverse or erroneous. The petitioner is yet to file its written statement in the main appeal. The petitioner has the liberty to raise all the grounds as it may deem fit and proper.

12. As such, this petition is devoid of merit and is, therefore, dismissed.

( RAVINDRA V. GHUGE, J. )