

IN THE HIGH COURT OF BOMBAY AT GOA
MISCELLANEOUS CIVIL APPLICATION NO. 689 OF 2014
IN
STAMP NUMBER MAIN No.2334/2014

Shri Avdoot @ Mahadev Shet
Verekar (since Dec. Thr. Legal
Heirs) and Anr. ... Applicants

Versus

Shri Atmaram Jairam Pilankar
and Anr. ... Respondents

Mr. J. J. Mulgaonkar, Advocate for the applicants.

Mr. S. D. Padiyar, Advocate for the respondents.

CORAM :- C. V. BHADANG, J.

Date : 16th July, 2015.

ORAL ORDER :

By this application, the applicants/ original plaintiffs are seeking condonation of delay of 291 days in filing the Second Appeal.

2. The applicants/plaintiffs had filed a suit for declaration and mandatory injunction, which was dismissed and the appeal filed by the applicants was also dismissed by the Appellate Court. The judgment and decree of the Appellate Court is dated 20/08/2013. It is contended that there was some misconception

between the applicants and the Counsel about filing an application for certified copy. However, it ultimately transpired that the application for certified copy was not made. Hence, the certified copy was applied for on 20/11/2013 and it was received on 25/11/2013. It appears that as per the High Court Appellate Side Rules, the Second Appeal has also to be accompanied by a copy of the judgment and decree of the Trial Court. The same was applied for on 04/12/2013 and initially, the endorsement below the certified copy shows that the applicants were called upon to take delivery of the certified copy on 12/12/2013, which time was extended to 30/06/2014. On that date, the certified copy of the judgment of the Trial Court was ultimately delivered. It is contended that as the record and proceedings of the Trial Court were not traceable, the period was extended from 12/12/2013 to 30/06/2014. Be that as it may, according to the applicants, they contacted the Counsel in the second week of August, 2014. However, Advocate was unavailable on account of some religious festivities till 04/09/2014. Ultimately, Second Appeal, accompanied by an application for condonation of delay, came to be filed on 06/09/2014, by which time, there was delay of 291 days.

3. It is submitted by the learned Counsel for the

applicants that initially there was some misconception between the applicants and the Counsel as both of them were under impression that the other had applied for certified copy. The learned Counsel has also filed his affidavit dated 25/06/2015 in support of the application. It is submitted that as the filing of the appeal requires production of certified copy of the judgment and decree of the Trial Court also, it was applied on 04/12/2013 and the copies were delivered on 30/06/2014. It is submitted that if the time taken after 30/06/2014 is concerned, it is little over two months when the appeal is filed on 06/09/2014. It is submitted that the delay is neither intentional nor arising out of absence of diligence. It is submitted that the respondents have also not changed their position to their detriment on the assumption that the judgment and decree has attained finality and that may be one of the circumstances, which may be relevant while condoning the delay. It is submitted that thus, the delay deserves to be condoned.

4. The respondents have filed reply and have opposed the application. It is contended that the applicants have not shown sufficient cause for not filing the appeal within time. It is submitted that the circumstances would show that the applicants have not acted diligently. It is submitted that there is no

explanation why even after 30/06/2014, the applicants have not approached the Counsel till the second week of August, 2014. It is also submitted that it is inconceivable that the Counsel would be busy in religious festivities for a period of over one month. It is submitted that the entire circumstances clearly smack of gross negligence on the part of the applicants. The learned Counsel has placed reliance on the decision of the Hon'ble Apex Court in the case of **Ajit Singh Thakur and another Vs. State of Gujrat**, reported in AIR 1981 (SC) 733, in order to submit that the applicants in such case have to show that on account of some reason/ circumstance, which had occurred during the period of limitation, which prevented the applicants from filing the appeal within time. It is submitted that in the present case, the certified copy of the judgment and decree of the trial Court itself, was applied for, after the period of limitation had expired. Reliance is then placed on the decision of the Apex Court in the case of **Esha Bhattacharjee Vs. Managing Committee of Raghunathpur Nafar Academy and others**, reported in (2013)12 SCC 649, in order to submit that the Apex Court has frowned upon an increasing tendency to perceive delay as non-serious matter, which has to be curbed. It is submitted that no case for condonation of delay is made out.

5. I have considered the rival circumstances and the submissions made.

6. The only point, which arises for determination is as to whether the applicant has made out sufficient cause, for not filing the appeal within time and whether the delay of 291 days deserves to be condoned. It is trite that existence of sufficient cause is the *sine qua non* for condonation of delay. The question whether the applicants have sufficient cause would depend on facts and circumstances of each case.

7. In the case of **Ajit Singh Thakur** (supra), the State Government had initially taken a decision not to file an appeal and had allowed the period of limitation to lapse. Subsequently, on certain observations of the High Court while considering a Revision Petition that it was a fit case for the State Government to challenge, that the decision of filing an appeal was taken and the appeal was sought to be filed with a prayer for condonation of delay. It was, in these circumstances, held that when a party allows the limitation to expire, the sufficient cause must establish that because of some event or circumstance arising before the limitation expires, it was not possible for the party to file the appeal within time.

8. In the present case, the learned Counsel appearing for the applicants has filed his affidavit stating that on account of some misconception about filing of the application for certified copy that it was not filed within the period of limitation. However, when it ultimately transpired that the certified copy was not applied for, the application was made on 20/11/2013 which would be about a day or two after the limitation had expired. In my considered view, the present case would be distinguishable on account of the fact that there is an affidavit filed by the Counsel, showing the reason for not taking steps for filing an application for certified copy within limitation. So far as the further part of the delay is concerned, it does appear from the certified copy of the judgment and decree of the trial Court that the period for delivery was extended from 12/12/2013 to 30/06/2014. Explanation for further period thereafter, is mostly on account of the Counsel being engaged in some religious festivities. The question is whether in overall view of the matter, the delay would afford sufficient cause so as to be condoned.

9. In the case of **Esha Bhattacharjee** (supra), the Hon'ble Apex Court, after a survey of the decisions holding the field, has set out the following broad principles in paragraph 15,

which read thus :

“15. From the aforesaid authorities the principles that can broadly be culled out are:

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.”

8. Some additional principles are set out in paragraph 16 as under :

“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”

It can, thus, be seen that the Court has to weigh the rival circumstances, in order to find, whether sufficient cause is made out and in such an endeavour, one of the aspects to be considered is that substantial justice is paramount and pivotal. The technical considerations should not be given undue and uncalled for emphasis. The Apex Court has held that there is no presumption that any delay is intentional and any party stands to gain by approaching the Court late. In paragraph 15(viii), the Hon'ble Apex Court has drawn a distinction between inordinate delay and delay of short duration or few days and has held that in the later case, a liberal approach may be called for. As noticed earlier, the present application is filed littler over two months, after the receipt of the certified copy of the judgment and decree of the Trial Court. It would appear that the said application itself was pending from 04/12/2013. It is undisputed that the relevant rules require that the appeal memo shall be accompanied by a certified copy of the judgment and decree of the Trial Court. In the overall circumstances, I find that the applicants have made out a sufficient cause for condonation of delay, subject to payment of costs of Rs.5,000/- to the respondents.

9. In the result, the following order is passed :

- (i) The application is allowed.
- (ii) Delay in filing the Second Appeal is condoned, subject to payment of costs of Rs.5,000/- to the respondents, within a period of two weeks from today.
- (iii) Let the Second Appeal be registered on payment of costs.

C. V. BHADANG, J.

SMA