

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

CRIMINAL APPLICATION NO.330 OF 2012

Mr. K.F.J. Paul

...Applicant
(orig complainant)

Versus

Mrs. Seema J. Ahuja & Ors.

...Respondents

.....

Mr. K.F.J. Paul, Applicant in-person present.

Mr. Niranjana Mundargi for the Respondent Nos. 1 & 2.

Mr. J.H. Ramugade, APP for Respondent No.3-State.

CORAM : SMT. ANUJA PRABHUDESSAI, J.

DATE : 16th OCTOBER, 2015.

P. C. :

The Applicant herein is the original complainant in C.C. No.12232/SS/2007 filed under section 138 of the Negotiable Instruments Act. Said complaint was dismissed vide judgment dated 25th November, 2009. Aggrieved by the said dismissal the Applicant preferred an application for leave to appeal alongwith application for condonation of delay bearing application No.1366 of 2010. The said application was dismissed on two occasions and was restored and again dismissed for want of prosecution for the third time on 8th April, 2011. The Applicant herein has filed restoration application alongwith

prayer to condone the delay of 429 days in filing the said restoration application.

2. Heard the Applicant, who is present in-person and the learned counsel Mr. Niranjan Mundergi for the Respondent Nos.1 and 2.

3. At the outset, it must be mentioned that in the case of **Esha Bhattacharjee Vs. Managing Committee of Raghunathpur Nafar Academy & Ors. (2013) 12 SCC 649**, the Apex Court has reiterated the principles laid down in the earlier decisions and added some guidelines, which are as under :-

“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 in 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.”

4. In the instant case, the Applicant has stated that when he learnt about the dismissal of the case he informed his Advocate on record but his Advocate informed him that she is unable to attend the Court as she had suffered from slip-disc and was advised to undergo urgent operation and treatment for the same. The Applicant has placed on record copy of discharge card and the medical certificate at Exh.-B collectively. Perusal of the same shows that the concerned Advocate was admitted in the hospital on 28.3.2011 and was discharged on 30.3.2011. There is nothing on record to indicate that the learned counsel for the Applicant was under treatment for over a year. The reasons in para No.5 of the application do not show sufficient grounds. The delay is gross and reflects total negligence on the part of the Applicant. Though the Respondent Nos. 1 and 2 had been acquitted in the year 2009, they are forced to pursue this litigation since last over five years due to lackadaisical attitude of the Applicant. Furthermore, a valuable right accrued in favour of the Respondent Nos.1 and 2 cannot be taken away on the mere asking, particularly when the

Applicant has not been able to show sufficient cause or when the delay is the result of negligence and inaction of the Applicant.

5. Resultantly, the application is dismissed.

(ANUJA PRABHUDESSAI, J.)