

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 671 OF 2015
IN
CRIMINAL APPLICATION NO.3469 OF 2008

M/s. Enviroscientific Dredging and
Water Project Private Ltd. through
Director-

Mr. Gautam Shripad Dongare

...Applicant

Versus

Sushil Sadashiv Gore & Anr.

...Respondents

.....

Mrs. Prabha Badadare for the Applicant.

Ms R.V. Newton, APP for Respondent No.2- State.

CORAM : SMT. ANUJA PRABHUDESSAI, J.

DATE :8th OCTOBER, 2015.

P. C. :

The learned counsel for the Applicant by this application has sought to condone the delay of three years and 359 days in filing the application for restoration.

2. The learned counsel for the Applicant submits that the Applicant had filed an application for leave to appeal bearing Criminal Application No.3469 of 2008, which was dismissed for non prosecution

on 29.6.2011. He further submits that advocate on record had lost track of the matter and as such could not follow the matter diligently. He therefore, prays that delay in filing the restoration application be condoned.

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 the matter was argued on 22nd July, 2010 and was listed on 23rd August, 2010 and subsequently placed on the board of 29th June, 2011. The order dated 29th June, 2011 reveals that none had appeared for the Applicant even on second call and hence the Criminal application No.3469 of 2008 was dismissed for want of prosecution. The learned counsel for the Applicant has stated that due to inadvertence the advocate on record had lost the track of the said application for leave to appeal. He has further stated that the Applicant had contacted his advocate before the summer vacation and due to ensuing summer vacation, the Application for restoration could not be filed. It is further stated that thereafter the Advocate on record was ill and advised to take compulsory rest. Due to his sickness he was unable to file the application.

5. It is pertinent to note that the application was dismissed on 29th June, 2011 and the present application was filed on 7th August, 2015 i.e. after a period of three years and 359 days. It is not the case of the Applicant that his advocate was sick and was advised to take rest

during the entire period of three years and 359 days. The delay is gross and the mere statement that the advocate on record lost track of the case cannot be construed as a sufficient cause. Under these circumstances, it would be unreasonable to take away the right accrued in favour of the Respondent on the mere asking of the Applicant, particularly when the delay is directly result of negligence or inaction of the Applicant and his counsel.

6. Under the circumstances and in view of the discussion supra, the application for condonation of delay is dismissed.

(ANUJA PRABHUDESSAI, J.)

CERTIFICATE

Certified to be true and correct copy of the original signed
Judgment /order.