

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

**CRIMINAL APPLICATION NO. 804 OF 2015
IN
CRIMINAL APPLICATION NO.694 OF 2015**

Mr. Ramchandra Gunaji Jadhav ...Applicant

Versus

Mr. Suryakant Balkrishna Vichare &
Anr. ...Respondents

.....

Mr. Santosh S. Musale for the Applicant.
Mr. J.H. Ramugade for Respondent No.2- Staet.

CORAM : SMT. ANUJA PRABHUDESSAI, J.

DATE :8th OCTOBER, 2015.

P. C. :

Heard the learned counsel for the Applicant. By this application, the Applicant has sought to condone the delay of 350 days in filing the application for restoration of Criminal Application No.694 of 2015.

2. The Applicant herein was the complainant in C.C. No.591/SS/2013 for offence punishable under section 138 of the Negotiable Instruments Act. The learned Magistrate had dismissed the said complaint and acquitted the accused. Present Applicant had filed

an application for leave to appeal. Said application was dismissed pursuant to the order dated 25th August, 2014, wherein the Applicant was directed to furnish spare copies within two weeks from the date of the order and on failing which the matter was to be dismissed for want of prosecution without further reference to the Court. The Applicant having failed to furnish the spare copies within the time stipulated in the order dated 25th August, 2014, the Criminal Application No.694 of 2015 came to be dismissed.

3. The learned counsel for the Applicant has submitted that the delay was not intentional and was caused due to inadvertence act of the Advocate. He therefore, prays that the delay be condoned.

4. 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.”

5. By the present application the Applicant has sought to condone the delay of 359 days in filing the application for restoration. The only ground stated in the application is that the Applicant could not be filed in time due to inadvertent act of the advocate.

6. Needless to state that the delay is gross and bare statement that the application could not be filed due to inadvertent act of the advocate, cannot be construed as a sufficient ground. 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.

7. 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.