

NOTICE OF MOTION NO. 1212 OF 2015
IN
SUMMARY SUIT NO. 4870 OF 1999

1. The plaintiff filed this Summary Suit on 10th August, 1999. The writ of summons therein was served upon the defendants on 20th August, 1999. Soon, thereafter, i.e. on 8th September, 1999, the plaintiff took out the Summons for Judgment against the defendants. The Summons for Judgment was decided on 16th March, 2002 granting unconditional leave to the defendants to defend the suit. There were various further proceedings in the suit including the contempt proceedings filed by the plaintiff. Later, when the defendants failed to file written statement for more than 13 years, this Court by the order dated

29th January, 2015 directed the suit to be heard ex-parte against the defendants.

2. The present Notice of Motion taken out by the defendants is for recalling of the order dated 29th January, 2015, for condonation of delay of 13 years and 14 days in filing the written statement and for direction to the office to take the written statements of the defendants on record.

3. The affidavit-in-support of Notice of Motion is of defendant No.2 alone. Defendant No.1 is the partnership firm of which defendants No.2 to 4 are the partners. The explanation for delay in filing the written statement is set out at para 7 of the affidavit-in-support of the Notice of Motion. Defendant No.2 states therein that because he was constantly travelling “for business purposes and other social obligations” he was unable to keep a track of the matter. His wife also due to personal reasons was unable to attend to the matter. On account of these difficulties both had on 14th July, 2007 and 2nd January, 2008 respectively executed Power of Attorney in favour of their son one Rohan Mehta, so that he could follow up with the advocate from time to time. After certain point of time Rohan was not able to manage the litigations and failed to keep track of the suits. On 6th May, 2015 the advocate engaged by the defendants pointed out to defendant No.2 that his son had not attended his office to provide

instructions and therefore, written statement had not been filed in the suit. As regards defendant No.4, who resides at Vapi (Gujarat), it is stated by respondent No.2 that he also carried an impression that the son of defendant No.2 would be handling the case. Therefore, he also did not file the written statement. This explanation coming from defendant No.2 for defendant No.4 cannot be accepted. Any impression carried by defendant No.4 being his feelings would be entirely within his own knowledge. Therefore, there ought to have been a separate affidavit filed by him.

4. It is obvious from the affidavit-in-support of the Notice of Motion that the defendants had completely and knowingly neglected the proceedings. If defendant No.2 could attend to his business engagements as well as social obligations, nothing could have prevented him from attending to the Court matters. In any case, there are no details, whatsoever, given of the business and social engagements which had prevented defendant No.2 from attending to the matter. Apparently, about 5 to 6 years after the grant of unconditional leave to defend the suit, the defendants No.2 and 3 had realized that they had been neglecting the matter and hence gave Power of Attorney to their son. But, even thereafter, no written statement came to be filed. Thus, there is no explanation worth the name given by the defendants for the delay in filing the written statement.

5. Mr. Delhiwala, the learned advocate for the defendants relies upon the decision of the Apex Court in ***Rani Kusum (Smt) vs Kanchan Devi (Smt) and others reported in (2005) 6 Supreme court Cases 705*** to submit that all the Rules of the procedure are the handmaids of justice and that the object of prescribing procedure is to advance the cause of justice. Therefore, no party should ordinarily be denied opportunity of participating in the process of justice dispensation. Even, while appreciating and respecting the Principle of Law laid down in the decision cited, it must be held that the same cannot be stretched to the extent of assisting a grossly negligent litigant. The Law can never come to the rescue of an indolent litigant.

6. Mr. Khandeparker on the other hand relies upon three decisions of the Apex Court :

- (1) Kailash vs. Nanhku reported in AIR 2005 Supreme Court 2441,***
- (2) Pundlik Jalam Patil (Dead) vs. Executive Engineer, Jalgaon Medium Project and Another reported in (2008) 17 Supreme Court Cases 448 and***
- (3) Esha Bhattacharjee vs. Managing Committee of Raghunathpur Nafar Academy and ors. reported in (2013) 12 Supreme Court Cases 649.***

In the latest decision the Apex court has set out as many as 17 principles for considering an application for condonation of delay, The same read as follows :

21.1 (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.

21.2 (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.

21.3 (iii) Substantial justice being paramount and pivotal the technical considerations should not be given undue and uncalled for emphasis.

21.4 (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.

21.5 (v) Lack of bona fides imputable to a party seeking condonation of delay is a significant and relevant fact.

21.6 (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.

21.7 (vii) The concept of liberal approach has to encapsulate the conception of reasonableness and it cannot be allowed a totally unfettered free play.

21.8 (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.

21.9 (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.

21.10 (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.

21.11 (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.

21.12 (xii) *The entire gamut of facts are to be carefully scrutinised and the approach should be based on the paradigm of judicial discretion which is founded on objective reasoning and not on individual perception.*

21.13 (xiii) *The State or a public body or an entity representing a collective cause should be given some acceptable latitude.*

22.1 (a) *An application for condonation of delay should be drafted with careful concern and not in a haphazard 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.*

22.2 (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.*

22.3 (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.*

22.3 (d) *The increasing tendency to perceive delay as a non-serious matter and, hence, lackadaisical propensity can be exhibited in a nonchalant manner requires to be curbed, of course, within legal parameters.*

The facts of the case on hand disclose patent inordinate delay on the part of the defendants and as such attracts the doctrine of prejudice. The delay is to the extent of completely ignoring the proceedings. Taking a liberal view of such gross facts would amount doing injustice to the plaintiff and allowing premium on the negligence of the defendants. The Notice of Motion is therefore dismissed.