

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

CAS NO.502 OF 2014

IN

SA ST.NO.5850 OF 2014

**SMT. TURSABAI WD/O SHANKAR DHAK (SINCE DEAD) THR. HER LRS.EKNATH S/O
SHANKAR DHAK AND OTHERS**

V/S

SMT. MANGALABAI WD/O CHOKHESHWAR LONDHE AND OTHERS

Office Notes, Office Memoranda of
Coram, appearances, Court's orders
of directions and Registrar's orders

Court's or Judge's order

Shri M. Rajkondawar, counsel for the applicants.

Shri M.P. Khajanchi, counsel for NA Nos.1 to 3, 6 to 20, 22 to 26.

CORAM : A.P. BHANGALE, J.

DATE : JULY 31, 2015.

Heard.

This application is for condonation of delay under Section 5 of the Limitation Act, 1963 in order to prefer the second appeal after the lapse of 3522 days.

According to the applicants, they are illiterate, poor persons, live in a small village of Chandrapur District and could not contact their counsel frequently to take follow-up of the pending matter. The counsel of the applicants had never informed them anything about the matter. They were unaware about the judgment passed by learned 4th Additional District Judge, Chandrapur in RCS No.18 of 1991 on 27.4.2004. The applicants came to know about the decision in RCS No.18 of 1991 when applicant No.8 was served with notice of the execution proceedings in Regular Darkhast No.5 of 2013. Thus,

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the applicants pray for condonation of delay since they are illiterate and poor persons and they could not understand the provisions of law.

Learned counsel for the applicants took me through the application and prays that the delay may be condoned upon any reasonable terms in the interest of justice for hearing of the second appeal.

Learned counsel for the non-applicants strongly opposes the application for condonation of delay. It is contended that the averments made in the application are false and misleading as by their own showing the applicants cannot be considered as illiterate and poor persons as some of them are businessmen. Learned counsel further submits that delay of 3522 days in order to prefer the second appeal cannot be condoned unless sufficient cause is made out to condone such inordinate and huge delay. He submits that the applicants cannot plead any excuse not to adjudicate their counsel representing them in the trial Court when RCS No.168 of 1978 was pending. It was decided on 15.1.1991. Thereafter, RCS No.18 of 1991 preferred on 14.2.1991 by the plaintiffs was allowed on 27.4.2004. The decree for specific performance of contract dated 12.6.1973 was granted in RCS No.18 of 1991 by learned 4th Ad hoc Additional District Judge, Chandrapur on 27.4.2004. Thereafter, regular execution proceeding bearing Regular Darkhast No.5 of 2013 was filed and also

served upon the applicants. Thus, the applicants cannot feel ignorance of progress of RCS No.168 of 1978 which ultimately resulted in decree in favour of the plaintiffs on 27.4.2014. After remaining dormant and lythargic for a period of 3522 days, it is submitted that the applicants cannot be permitted to continue litigation which has been pending since year 1978.

Learned counsel for the non-applicants placing reliance in the case of H. Dohil Constructions Company Private Limited ..vs.. Nahar Exports Limited and another, reported at (2015)I SCC 680 submitted that in paragraph No.24 thereof the reference is made to the ruling in the case of Esha Bhattacharjee ..vs.. Raghunathpur Nafar Academy, reported at (2013) 12 SCC 649, wherein it has been observed thus :

..... it has to be stated that the failure of the respondents in not showing due diligence in filing of the appeals and the enormous time taken in the refilling can only be construed, in the absence of any valid explanation, as gross negligence and lacks in bona fides as displayed on the part of the respondents.

In that case delay of 1727 days was sought to be condoned and it was in connection with the original suit for specific performance. The Apex Court observed that the respondents in that case should have shown utmost diligence and come forward with

justifiable reasons when an enormous delay of five years was involved in getting its appeals registered. Ultimately, the Apex Court refused to condone the delay which was sought to be condoned in a casual manner without giving reasons for the same.

Learned counsel for the non-applicants has placed another reliance in the case of **Basawaraj and another ..vs.. Special Land Acquisition Officer**, reported at **(2013) 14 SCC 81**. He has made reference to paragraph No.9 of the ruling which mentions meaning of the terms “sufficient cause”. The meaning of the work word “sufficient” is “adequate” or “enough”, inasmuch as may be necessary to answer the purpose intended in the context. It was observed that the parties should not have acted in a negligent manner or there was a want of bona fide on its part in view of the facts and circumstances of a case or it cannot be alleged that the party has not acted diligently or remained inactive. The Apex Court has in paragraph No.12 of the case cited (supra) has mentioned the settled legal position that the law of limitation may harshly affect a particular party but it has to be applied with all its rigour when the statute so prescribes. The Court has no power to extend the period of limitation on equitable grounds. “A result flowing a statutory provision is never an evil. A Court has no power to ignore that provision to relieve what it considers a distress resulting from its operation.”

The statutory provision may cause hardship or inconvenience to a particular party but the Court has no choice but to enforce it giving full effect to the same. The legal maxim *dura lex sed les* which means the law is hard but it is the law, stands attracted in such a situation. It has consistently been held that, “inconvenience is not” a decisive factor to be considered while interpreting a statute. In paragraph No.13 the following observations are made, thus:

“An unlimited limitation would lead to a sense of insecurity and uncertainty, and therefore, limitation prevents disturbance or deprivation of what may have been acquired in equity and justice by long enjoyment or what may have been lost by a party's own inaction, negligence or laches”.

Thus, the law is summarized in paragraph No.15 where the case has been presented in the Court beyond limitation, the applicant has to explain the court as to what was the sufficient cause which means an adequate and enough reason which prevented him to approach the court within limitation. In case a party is found to be negligent, or for want of bona fide on his part in the facts and circumstances of the case, or found to have not acted diligently or remained inactive, there cannot be a justified ground to condone the delay. No court could be justified in condoning such an inordinate delay by imposing any condition whatsoever. The application is to be decided only

within the parameters laid down by this Court in regard to the condonation of delay. In case there was no sufficient cause to prevent a litigant to approach the court on time condoning the delay without any justification, putting any condition whatsoever, amounts to passing an order in violation of the statutory provisions and it tantamounts to showing utter disregard to the legislature. Thus, observing the Apex Court was pleased to dismiss the appeal.

Learned counsel for the non-applicants has placed another reliance in the case of **D.Gopinathan Pillai ..vs.. State of Kerala and another** reported at **(2007) 2 SCC 322**. In paragraph No.5 thereof delay of 3320 days was sought to be condoned. The Apex Court observed, thus:

“When a mandatory provision is not complied with and when the delay is not properly, satisfactorily and convincingly explained, the court cannot condone the delay, only on the sympathetic ground.”

Thus inordinate delay of 3320 days was not condoned as according to the Apex Court delay cannot be condoned without assigning any satisfactory reason.

Looking to the principles mentioned in the above rulings and considering the facts and circumstances of the present case it is difficult to believe that in RCS No.168 of 1978 which started in

the year 1978 and decided on 15.1.1991 and the plaintiffs aggrieved by dismissal of the suit and preferred RCS No.18 of 1991 which was allowed and was decreed on 27.4.2004, the applicants most of them business are the residents of Chandrapur and, therefore, one cannot believe that they could not contact their counsel when the appeal was heard and decided by the trial Judge, the applicants are so irresponsible in making the statement in the application that they claimed themselves as poor and illiterate persons which contract when one reads title of the application that most of them are businessmen and are residents of city Chandrapur. Therefore, it cannot be believed that they are illiterate or poor persons. The applicants did not bother to explain such inordinate and huge delay as to why they could not contact their counsel practising in Chandrapur when some of the applicants of resident of Chandrapur. No no sufficient cause is made out to condone huge and inordinate delay of 3522 days. The law cannot aid and assist dormant and lythargic litigants who fail to explain as to why the delay shall be condoned in order to prefer the second appeal. As such, the remedy of second appeal itself is not a matter of right as under Section 100 of the Civil Procedure Code. The remedy by way of second appeal is available in limited cases where the High Court is satisfied that the case involves substantial question of

law in the present case. The original agreement to sale was executed between the parties to RCS No.168 of 1978 long back 29.6.1973. The amount of consideration was also paid which was in the sum of Rs.6,000/-. As certain statutory permission was required as to execution, the sale deed was not obtained by the defendants. The plaintiffs had chosen remedy to file specific performance of contract by instituting RCS No.168 of 1978 though the plaintiffs could prove their suit agreement. The trial Court had refused to pass the decree in favour of the plaintiffs. The plaintiffs had to approach the District Court by in RCS No.18 of 1991 in which the decree was made in favour of the plaintiffs on 27.4.2004.

Looking to this facts it was necessary for the applicants to make responsible and true statement before the Court and ought to have explained each day's delay in order to make out sufficient cause as to why they could not contact their counsel when they were residents of the same city and for such long years when litigation was pending during the period from 1978 till 2004. It is difficult to believe that the applicants could not contact their counsel until Regular Darkhast No.5 of 2013 started to enforce the decree passed in favour of the plaintiffs by them. Looking to these facts and considering that the applicants have shown courage to make false statement for seeking condonation of delay in such

cases and if such huge or inordinate delay is condoned, there would be no end to the litigation and there would be no finality of the judgment. Hence, the application is rejected.

JUDGE

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