

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

CRIMINAL APPLICATION (APPP) NO. 822 OF 2015

(Shriram Tryambak Vyas & another Vs. Washim Urban Co-Op. Bank Ltd.)

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

Court's or Judge's orders

Applicant No.1. - in person.
Mr. S. G. Joshi, Advocate for the respondent.

CORAM : A. B. CHAUDHARI, J.
: 23 NOVEMBER, 2015

This is an application for condonation of delay of more than six years in filing application for restoration of Criminal application No. 2897 of 2007 that was dismissed in default on 22/01/2009.

Heard applicant No.1 in person who submits that there are cases where Hon'ble Supreme Court so also the Bombay High Court have condoned delay of ten years and, therefore, there is nothing unusual in asking for condonation of delay of more than six years. He further submits that at one point of time the application was heard but the judgment was not delivered and, therefore, he is not at fault.

Per contra, learned Counsel for the respondent-Bank submits that the case relates to the default of payment of loan amount by the applicants to the Bank and consequent filing of these proceedings under Section 138 of the Negotiable

Instruments Act. He further submits that Criminal Application No. 2897 of 2007 arose out of the order of issuance of process only and nothing more. He submits that the trial for offence under Section 138 of N.I. Act is now ripe and posted for recording of evidence.

I have perused the reasons furnished by the applicants in the application for claiming condonation of delay. The only reason given in paragraph-2 of the application is that the applicant was expecting notice of hearing from this Court, which he did not receive despite the fact that the matter was not listed before the Court for some days and that he had actually appeared in the Court in person.

It is not in dispute that original application No. 2897 of 2007 was filed by the applicant himself and was entertained for number of days. In accordance with the prevailing rules, it was for the applicant to make his own arrangement to prosecute the application and if at all he was not in a position to prosecute, he could seek help of the Legal Aid. But, then to say that he expected notice from the High Court for prosecution of his own case, though he himself had filed the case, there is no such procedure of sending repeated notices to the applicant after filing of the case by the applicant. That apart, this Court would have sympathetically considered

the issue of condonation of delay in filing the application for restoration, but then, it is seen that the application is blissfully silent about the period after January, 2009. The applicant was expected to disclose sufficient reasons at least after January, 2009 when his matter was dismissed in default by this Court. At any rate, the delay is enormous and this Court is not inclined to condone the same for one more reason that the trial has now commenced before the trial Court, as stated by the learned Counsel for the respondent. There is, therefore, no point in restoring the application wherein the challenge was to issue of process, in which case the trial now is being held. That would result in to lingering of trial and nothing more. It is the duty of the trial Court to expeditiously complete hearing of the matter. Hence, the following order.:

ORDER

Criminal application(APPP) No. 822 of 2015 is dismissed.

No order as to costs.

The applicants are at liberty to appear before the trial Judge, who shall allow them to participate in the trial.