

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE THE CHIEF JUSTICE MR.ASHOK BHUSHAN

&

THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE

WEDNESDAY, THE 18TH DAY OF NOVEMBER 2015/27TH KARTHIKA, 1937

WA.No. 1517 of 2011 () IN OP.6687/1993

AGAINST THE JUDGMENT IN OP 6687/1993 DATED 16-11-2000

APPELLANT(S) :-

AYSUMMA, AGED 61 YEARS, W/O.KALIYATH KUNHI MOHAMMED,
AZAD MANZIL, PARAVANNUR, MALAPPURAM DISTRICT.

BY ADV. DR.GEORGE ABRAHAM

RESPONDENT(S) :-

1. UNION OF INDIA,
REP. BY ITS SECRETARY
MINISTRY OF FINANCE (DEPARTMENT OF REVENUE &
INSURANCE), NORTH BLOCK, NEW DELHI-110 001.
2. THE COMPETENT AUTHORITY
UNDER THE SMUGGLERS AND FOREIGN EXCHANGE
MANIPULATORS (FORFEITURE OF PROPERTY) ACT, NO.9
PYEROFTS GARDEN ROAD, MADRAS-600 001.
3. THE REGISTRAR,
APPELLATE TRIBUNAL FOR FORFEITED PROPERTY, 4TH FLOOR
LOK NAYAK BHAVAN, NEAR KHAN MARKET, NEW DELHI-110 001.

BY SRI.N.NAGARESH, ASSISTANT SOLICITOR GENERAL

BY SRI.P.PARAMESWARAN NAIR, ASST.SOLICITOR

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 18-11-
2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

jvt

**ASHOK BHUSHAN, C.J &
A.M. SHAFFIQUE, J.**

**W.A. No.1517 of 2011
and
C.M. Appln. No.888 of 2011**

Dated this the 18th day of November 2015

J U D G M E N T

Shaffique, J.

C.M.Appln. No.888 of 2011 is an application to condone the delay of 3942 days in filing the appeal. A statement has been filed on behalf of respondents 1 to 3 opposing the said petition.

2. In the affidavit filed in support of the said petition, it is stated that the judgment was delivered on 16.11.2000, by which, the writ petition came to be dismissed. It is stated that the appellant is an illiterate person. The elder son, who had accompanied the appellant, had entrusted the matter to the counsel for filing an appeal and thereafter he had gone abroad. Her husband also gone to North India for job and was working there for quite a long time. The appellant was not aware of the proceedings and in the mean time, she was informed by the lawyer at Calicut that the case was decided in her favour. The respondent authority also did not take any action for about 10 years and thereafter when they attempted to take proceedings

against her property, the petitioner made enquiries through her second son, who is a teacher. Her second son had gone to Madras for getting particulars and only on receiving such particulars, it was known that the writ petition came to be dismissed. According to the petitioner, she was not aware of the dismissal of the writ petition and she being an illiterate person, was informed that the case was decided in her favour, which resulted in the delay in filing the appeal.

3. In the statement filed on behalf of respondents 1 to 3, it is stated that the delay is not properly explained and there is no sufficient cause for condoning the delay.

4. Learned counsel for the petitioner/appellant relies upon the judgment of the Supreme Court in **Collector, Land Acquisition, Anantnag and Another v. Mst.Katiji and others** [1987 (2) SCC 107] in order to contend that when the legislature has conferred power to condone delay on sufficient cause being shown, the expression 'sufficient cause' is adequately elastic to enable the Courts to apply the law in a meaningful manner, which subserves the ends of justice.

5. Another judgment relied upon is the judgment in **Esha Bhattacharjee v. Managing Committee of Raghunathpur**

Nafar Academy and others [2013 (12) SCC 649], wherein, the Supreme Court has laid down certain principles for condoning the delay in paragraphs 21 and 22 of the said judgment, which read as under :-

“**21.** 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.

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- 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 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.
- xi) It is to be borne in mind that no one gets away with fraud, misrepresentation or interpolation

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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.

22. 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.”

6. Learned counsel for the petitioner reiterates the averments made in the affidavit filed in support of the delay condonation petition and seeks to condone the delay in filing the appeal.

7. Having heard the learned counsel for the petitioner as well as the learned Assistant Solicitor General appearing on behalf of the respondents, we are not satisfied with the reasons stated for condoning the delay. The delay is about ten years and it is quite unbelievable that the petitioner kept quiet for such a long time without knowledge about the outcome of the writ petition. According to the petitioner, she is illiterate, but even as per the affidavit, she has husband and two sons, of which, one is abroad and one is a teacher. She had all the facilities to make arrangements to obtain certified copy of the judgment, when it was informed by the lawyer that the case was decided in her favour. No such attempt was made and only at the stage when proceedings were taken by the respondent authorities by invoking

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the statutory provisions that she had preferred this appeal. The averments in the affidavit filed in support of the delay condonation petition does not enable us to come to a conclusion that sufficient cause has been shown to condone the delay, especially, when there is a delay of about a decade. The principles laid down by the Supreme Court to condone delay cannot be extended in this case as the delay is gross and insufficiently explained. Any litigant has to be vigilant about the consequences of the litigation, which is lacking in this case.

Under such circumstances, there is no merit in the averments made in the affidavit filed in support of the delay condonation petition. Hence, the delay condonation petition is dismissed.

Consequently, the writ appeal is also dismissed.

Sd/-
ASHOK BHUSHAN
CHIEF JUSTICE

Sd/-
A.M. SHAFFIQUE
JUDGE