

Application No.4986 of 2010

in

C.S.No.685 of 1988

S.VIMALA, J.

The plaintiff filed an application in A.No.4986 of 2010 in C.S.No.685 of 1988 seeking condonation of delay of 1718 days in representation.

2. In the supporting affidavit in para-9, it has been stated that application for restoration was filed on 01.11.2002 in D.NO.29609; it was returned and it could not be represented as it was misplaced. Hence fresh affidavit was prepared and represented.

3. In the same paragraph, it has been stated that after compliance of the return, the affidavit along with the Judges Summon was represented on 20.04.2007, and thus, there is a delay of 1718 days in representation.

4. Because of the discrepancy, this Court directed the learned counsel for the plaintiff/applicant to file better affidavit on 10.04.2015. Till date, no better affidavit is filed.

5. The learned counsel for the applicant wanted extension of time to file better affidavit.

6. Learned counsel for the respondent relying upon a decision reported in **2013 12 SCC 649 (Esha Bhattacharjee vs. Managing Committee of Raghunathpur Nafar Academy and others)**, submitted that there was neither bona fides nor sufficient cause to condone the delay as per the guidelines given in the above decision and therefore, the application to condone the delay itself is

liable to be dismissed and that the Court should not grant further time for filing better affidavit.

The Principles applicable to an application for condonation of delay are as follows:

(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 consideration 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 encapsulate 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 of 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 by taking recourse to the technicalities of law of limitation.

(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.

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

(xiv) 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.

(xv) 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.

(xvi) 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.

(xvii) 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.

In the light of the decision relied upon and considering the conduct of the plaintiff/applicant, the application to condone the delay is dismissed.

03.06.2015

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