

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 9778 OF 2013

Dr. Khayyumkhan Mohammadkhan
Pathan and Others

..PETITIONERS

VERSUS

Sanjeev Bhagwanrao Kokil and Another

..RESPONDENTS

....
Mr. S.D. Karkare, Advocate holding for Mr. P.K. Joshi for
petitioners.

....

**CORAM : RAVINDRA V. GHUGE, J.
DATED : 12th FEBRUARY, 2016**

ORAL ORDER :

1. By order dated 13.01.2016 passed in Civil Application No. 170/2016, notice to Respondent Nos.1 and 2 was permitted to be served through paper publication.

2. Pursuant to the said order, both the respondents have been served through paper publication on 25.01.2016. Original copy of the newspaper Dainik Ekmat (Marathi), Latur Edition is placed on record. Despite the paper publication none has appeared on behalf of the respondents.

3. The petitioners submit that R.C.S. No. 218/1993 was dismissed in default on 08.01.2013. The clerk of the advocate appearing on behalf of the plaintiff (petitioner herein), took the next date as 15.02.2013. After the advocate came to know that the matter was already dismissed on 08.01.2013, he immediately filed an application MARJE No. 85/2013 on 18.02.2013. Ten days delay was therefore caused in filing the application for restoration of R.C.S. No. 218/1993.

4. The petitioner submits that neither do the petitioners gain any advantage by allowing their suit to be dismissed in default nor do they gain any advantage by causing delay in seeking restoration of the petition. The application for restoration was not heard on its merits since the application for condonation of ten days delay has been rejected. He further submits that there are no laches attributed to the conduct of the petitioners. On account of the rejection of the application for condonation of delay, the doors of litigation have been closed for the petitioner.

5. I have considered the submissions of the learned Counsel for the petitioner.

6. It is apparent that the delay caused in filing the application for restoration was of about ten days. Neither can the said delay be termed as deliberate nor inordinate.

7. The Apex Court in the case of ***Collector, Land Acquisition Anantnag & Another Vs. Mst. Katiji and Others*** reported in ***AIR 1987 SC 1353*** had concluded in paragraph no.3 as under:-

“3. The legislature has conferred the power to condone delay by enacting Section 51 of the Indian Limitation Act of 1963 in order to enable the Courts to do substantial justice to parties by disposing of matters on 'merits'. The expression "sufficient cause" employed by the legislature is adequately elastic to enable the courts to apply the law in a meaningful manner which subserves the ends of justice--that being the life-purpose for the existence of the institution of Courts. It is common knowledge that this Court has been making a

justifiably liberal approach in matters instituted in this Court. But the message does not appear to have percolated down to all the other Courts in the hierarchy. And such a liberal approach is adopted on principle as it is realized that:-

**1 "Any appeal or any application, other than an application under any of the provisions of Order XXI of the Code of Civil Procedure, 1908. may be admitted after the prescribed period if the appellant or the applicant satisfies the court that he had sufficient cause for not preferring the appeal or making the application within such period."*

1. Ordinarily a litigant does not stand to benefit by lodging an appeal late.

2. Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this when delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties.

3. "Every day's delay must be explained" does not mean that a pedantic approach should be made. Why not every hour's delay, every second's delay? The doctrine

must be applied in a rational common sense pragmatic manner.

4. When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay.

5. There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala fides. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk.

6. It must be grasped that judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so.

Making a justice-oriented approach from this perspective, there was sufficient cause for condoning the delay in the institution of the appeal. The fact that it was the 'State' which was seeking condonation and not a private party was altogether irrelevant. The doctrine of equality before law demands that all litigants, including the State as a litigant, are accorded the same.

treatment and the law is administered in an even handed manner. There is no warrant for according a stepmotherly treatment when the 'State' is the applicant praying for condonation of delay. In fact experience shows that on account of an impersonal machinery (no one in charge of the matter is directly hit or hurt by the judgment sought to be subjected to appeal) and the inherited bureaucratic methodology imbued with the note-making, file pushing, and passing-on-the-buck ethos, delay on its part is less difficult to understand though more difficult to approve. In any event, the State which represents the collective cause of the community, does not deserve a litigant-non-grata status. The Courts therefore have to be informed with the spirit and philosophy of the provision in the course of the interpretation of the expression "sufficient cause". So also the same approach has to be evidenced in its application to matters at hand with the end in view to do even handed justice on merits in preference to the approach which scuttles a decision on merits. Turning to the facts of the matter giving rise to the present appeal, we are satisfied that sufficient cause exists for the delay. The order of the High Court dismissing the appeal before it as time barred, is therefore, set aside. Delay is condoned. And the matter is remitted to the

High Court. The High Court will now dispose of the appeal on merits after affording reasonable opportunity of hearing to both the sides.”

8. In the light of the ratio laid down by the Apex Court and for the reasons set out in the application, MARJE No. 85/2013, I find that the Trial Court has adopted a pedantic approach in refusing to condone the delay of ten days. Reasons for the delay are set out in the application. Each day's delay is not required to be explained. The delay caused is not inordinate.

9. In the light of the above, this petition is allowed. The order dated 21.09.2013 is quashed and set aside and the application for condonation of ten days delay is allowed. The delay of ten days is condoned.

(RAVINDRA V. GHUGE, J.)