

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.3870 OF 2016
IN
FIRST APPEAL (STAMP) NO.23364 OF 2016

Air India, Mumbai Applicant
V/s.
Videocon International Ltd., Mumbai & Anr. Respondents

Dr. Abhinav Chandrachud, a/w. Ms. Radha Bhandari, i/by Mr. Mittal Parekh, for the Applicant.

Mr. K.R. Bulchandani, a/w. Mr. Amit D. Nikam, for Respondent No.1.

CORAM : DR. SHALINI PHANSALKAR-JOSHI, J.

DATE : 1ST SEPTEMBER 2016.

P.C. :

1. Heard learned counsel for the parties.
2. This is an application for condonation of delay of 236 days in preferring the First Appeal against the impugned Judgment and Order dated 24th November 2015 passed by the City Civil Court, Mumbai in B.C.C.C. Suit No.8857 of 1993. According to learned counsel for the applicant, the impugned Judgment and Order of the Trial Court was pronounced on 24th November 2015. Applicant thereafter applied for certified copy of the said Judgment on 6th January 2016, which was

received by the applicant on 29th March 2016. The Legal Department of the applicant thereafter consulted with the Commercial Department and also consulted the Finance Department and thereafter the applicant proposed to challenge the impugned Judgment and Order on 7th April 2016. Accordingly, on 11th April 2016, a request was made to the Advocate to give final view for challenging the Judgment. On 18th April 2016, the Advocate's view was communicated to the Commercial Department as well as Cargo Department on 5th May 2016. As per the applicant, during the period from 7th May 2016 to 4th June 2016, the Advocate's office was closed for summer vacation and it was only on 20th June 2016, the Advocate was instructed to prepare the appeal and to challenge the Judgment. Accordingly, the Advocate, on 30th July 2016, called the concerned officers of the applicant for meeting, in which the officers from Finance Department as well as Legal Department were present. Thereafter on 8th August 2016, the draft appeal memo was received from the Advocate and approval to the said draft appeal memo was granted by Legal Department of the applicant on 11th August 2016. The Advocate thereafter prepared civil application for stay as well as civil application for condonation of delay and finalized the First Appeal Memo on 12th August 2016. The Advocate then instructed the applicant to deposit the Court fees on 12th August 2016. Since the approval for financial disbursement would take

time, then, without waiting for the full Court fees, the appeal was lodged on 16th August 2016 along with this application for condonation of delay.

3. This application for condonation of delay is strongly resisted by learned counsel for respondent No.1 by filing affidavit-in-reply of Manager of respondent No.1. In the first place it is submitted that, the delay in preferring the appeal is not at all properly calculated. The actual delay is of 241 days and not of 236 days, as calculated by the Department, or, 215 days, as calculated by the applicant. Secondly it is submitted that, the reason given for the delay is not at all satisfactory. An attempt is made to cast the blame on the correspondence between the various Departments to overcome this inordinate delay of 246 days. It is urged that even the certified copy of the Judgment and Order of the Trial Court was applied for only after the period of thirty-day for preferring the appeal was over. Further it is submitted that, there is no explanation offered as to how the delay took place between the period from 7th May 2016 to 4th June 2016. It is urged that, during summer vacation also, the urgent matters are entertained by this Court. Further it is submitted that, after the summer vacation, the Court opened on 6th June 2016. Thereafter also, till 26th June 2016, no further steps were taken. Only on 30th July 2016, the meeting was called and further steps were taken, but not diligently and urgently, as required. It is submitted by learned counsel for respondent No.1 that, only

after respondent No.1 filed the Execution Application No.229 of 2016 and in the said application, the Sheriff of Mumbai has, in accordance with law, attached the right, title and interest of the applicant in the property on 11th August 2016, with alarming alarcity, this appeal is filed and different grounds are now put up and invented to condone the delay.

4. Thus, in sum and substance, the submission of learned counsel for respondent No.1 is that, this is a fit case where the delay being not satisfactorily explained, the application for condonation of delay needs to be rejected.

5. To substantiate his submissions, learned counsel for respondent No.1 has placed reliance on the two decisions of the Apex Court; one that of *Post-Master General & Ors., Vs. Living Media India Limited & Anr.*, (2012) 3 SCC 563, wherein, after referring to its earlier decision, the Apex Court, in paragraph Nos.27 to 29, was pleased to observe as under :-

“27. It is not in dispute that the person(s) concerned were well aware or conversant with the issues involved including the prescribed period of limitation for taking up the matter by way of filing a special leave petition in this Court. They cannot claim that they have a separate period of limitation when the Department was possessed with competent

persons familiar with court proceedings. In the absence of plausible and acceptable explanation, we are posing a question why the delay is to be condoned mechanically merely because the Government or a wing of the Government is a party before us.

28. Though we are conscious of the fact that in a matter of condonation of delay when there was no gross negligence or deliberate inaction or lack of bona fides, a liberal concession has to be adopted to advance substantial justice, we are of the view that in the facts and circumstances, the Department cannot take advantage of various earlier decisions. The claim on account of impersonal machinery and inherited bureaucratic methodology of making several notes cannot be accepted in view of the modern technologies being used and available. The law of limitation undoubtedly binds everybody, including the Government.

29. In our view, it is the right time to inform all the government bodies, their agencies and instrumentalities that unless they have reasonable and acceptable explanation for the delay and there was bona fide effort, there is no need to accept the usual explanation that the file was kept pending for several months/years due to considerable degree of procedural red tape in the process. The Government Departments are under a special obligation to ensure that they perform their duties with diligence and commitment. Condonation of delay is an exception and should not be used as an anticipated benefit for the Government

Departments. The law shelters everyone under the same light and should not be swirled for the benefit of a few.”

6. These observations of the Apex Court were subsequently re-affirmed in another decision of *State of U.P., through the Executive Engineer and Anr. Vs. Amar Nath Yadav, [Special Leave Petition (Civil) No.882 of 2014 (arising out of CC No.20855 of 2013)]* by quoting the same and sending a message that merely because the applicant is a Government Authority or the Department, it cannot take it for granted that the delay will be condoned automatically, without offering reasonable and acceptable explanation. They cannot expect the Court to condone the delay on the usual explanation that the file was kept pending for process. It was further affirmed that condonation of delay is an exception and should not be used as an anticipated benefit for the Government Departments, as the law shelters everyone under the same light and should not be swirled for the benefit of a few.

7. According to learned counsel for respondent No.1, the observations of the Apex Court in both these authorities seal the fate of this application also, as the reason given for condonation of delay in this application is merely that of the time consumed in process of the file and no satisfactory or reasonable explanation being offered, which clearly, according to

learned counsel for respondent No.1, speaks of gross negligence and deliberate inaction, and, in such situation, this inordinate delay, in the light of the law laid down by the Apex Court in both these decisions, cannot be condoned; especially in view of the fact that the execution of the decree is already pending; the property is also attached and without making any reference to the same, the appeal is filed along with this application for condonation of delay.

8. Having heard learned counsel for the applicant and respondent No.1, the core issue for consideration is, *whether the sufficient and reasonable explanation is offered for condonation of this delay?* Whether the delay is of 215 days, as alleged by the applicant, or, whether it is of 236 days, as calculated by the Registry, or, whether it is of 241 days, as calculated by respondent No.1, the fact remains that the delay is in between 200 to 250 days. The question for consideration is, *whether on account of such delay, the statutory right of first appeal, which is vested in the applicant, can be taken away?*

9. Both these authorities, on which learned counsel for respondent No.1 has relied upon, pertains to the delay in filing Special Leave Petitions. In the Judgment of *Post-Master General & Ors. (supra)*, the

delay was of about 427 days in filing Special Leave Petition, whereas, in the case of *State of U.P., through the Executive Engineer (supra)*, the delay was again of 481 days in filing the Special Leave Petition. Though in the Judgment of *Post-Master General & Ors. (supra)*, the reference was made to the earlier decision by the Apex Court in the case of *Pundlik Jalam Patil Vs. Jalgaon Medium Project, (2009) 5 SCC (Civ) 907*, and in that case, the delay was in filing the appeals before the High Courts, it is pertinent to note that the delay in the said case was of 1724 days and in that context it was observed that the Court cannot enquire into belated and stale claims on the ground of equity. It was further held that the delay defeats equity and the Court helps those who are vigilant and do not slumber over their rights.

10. Thus, as rightly submitted by learned counsel for the applicant, these two Judgments of the Supreme Court and that of *Pundlik Jalam Patil (supra)* are also required to be distinguished, considering the fact that these two Judgments pertain to the delay in preferring Special Leave Petitions and, therefore, clearly seeking the exercise of the discretionary jurisdiction of the Apex Court, whereas, the present application for condonation of delay pertains to the entertaining of the First Appeal, which right is statutorily vested in the applicant. As to the case of *Pundlik Jalam*

Patil (supra), as already stated, the delay therein was inordinate delay of 1724 days and hence, as rightly held by the Supreme Court therein, the Court cannot enquire into belated and stale claims. Here in the case, it cannot be said that the delay is so inordinate that the Court should deprive or take away the statutory right of the applicant from filing its First Appeal or testing the Judgment and Decree passed by the Trial Court by this appellate Court.

11. Moreover, it is also not a case that a very vague averment is made in the application to explain the delay by stating that, it took place in various correspondence amongst the Departments. Conversely, all the details are given with the dates mentioned therein in paragraph Nos.7 and 8 of the civil application as to how the time was consumed not only in the three Departments, like, Legal Department, Cargo Department and the Finance Department in taking the decision, the major part of the delay, as can be seen, was on the part of the Advocate that due to summer vacation, the Advocate's office being closed. In such situation, it cannot be said that the applicant was utterly negligent or there was deliberate negligence on the part of the applicant in preferring this appeal or taking steps for preferring such appeal.

12. Now the law no more requires that each and every day's delay needs to be explained and such a pedantic approach should be adopted by the Court, especially, when the application is for condoning the delay in preferring the appeal. The law as such is not changed to the effect that the Court should adopt a liberal approach while considering the application for delay and do not throw out the case on technical ground at the threshold itself, without entering into the merits of the case. Especially, when it is First Appeal against the Judgment and Decree of the Trial Court, the correctness of the same needs to be tested and that is why the provision is made for the First Appeal. In such situation, the approach of the Court has to be liberal; whether it is a Government Department or whether it is a private individual. The above-said authorities do away the distinction in the approach to be adopted in respect of the private individual and the Government Departments or public undertakings, but they do not depart from the settled principle that the application for condonation of delay needs to be allowed liberally and the sufficient cause given for condonation of delay should receive a liberal approach. Considering the fact that the delay in the case is not so inordinate and also considering the fact that an attempt is made to explain the delay with details and particulars, in my considered opinion, to advance the substantial cause of justice, this application for condonation of delay needs to be allowed.

13. However, having regard to the fact that there is a delay, some amount of costs are required to be imposed, so as to be payable to respondent No.1 to compensate for the loss suffered by him.

14. As a result, the application for condonation of delay is allowed, subject to payment of costs quantified @ Rs.50,000/- by the applicant to respondent No.1 within a period of four weeks from today. On failure of the applicant to pay the costs, this application will automatically stand dismissed, without further reference to this Court.

15. On payment of costs by the applicant to respondent No.1 within the stipulated time, Registry is directed to register and number the First Appeal (Stamp) No.23364 of 2016 and place it for admission on 27th September 2016.

16. First Appeal (Stamp) No.23364 of 2016 to be heard along with First Appeal (Stamp) No.3229 of 2016.

[DR. SHALINI PHANSALKAR-JOSHI, J.]