

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 1035 OF 2017
WITH CA/6249/2017 IN WP/1035/2017

M/S TANK ENTERPRISES/TANK AUTO PRIVATE LTD.
VERSUS
M/S SUNNY GEARS (INDIA) PRIVATE LTD.

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Advocate for Petitioner : Shri Kedar Balbhim R.

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CORAM : RAVINDRA V. GHUGE, J.

Dated: October 11, 2017

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PER COURT :-

1. The petitioner is aggrieved by the impugned order dated 1.12.2016, by which, the trial Court has refused to condone the delay of 1360 days caused in filing an application for seeking restoration of MARJI No. 817 of 2008.

2. Despite service of Court notice by paper publication, none appears for the respondent / industry.

3. I have considered the submissions of the learned Advocate for the petitioner and have gone through the petition paper book with his assistance.

4. The petitioner had approached the trial Court in MARJI

No. 824 of 2014, seeking condonation of delay on the ground that an earlier MARJI No. 817 of 2008 was filed through Advocate Shri Bhandari. Said application came to be dismissed in default on 20.8.2011. The petitioner gathered the knowledge about the said order on 11.11.2014. After collecting the certified copies of the necessary details, MARJI No. 824 of 2014 was filed.

5. I find that the trial Court, while invoking Section 5 of the Limitation Act, 1963 has delved upon the phraseology used in Section 5 and especially, "sufficient cause to be shown". It has further held that since the delay is of almost 3 years and 8 months, it cannot be said to be condonable as reasons worthy of satisfying the Court have not been set out.

6. Learned counsel for the petitioner submits that as the issue of recovery of about Rs.2,64,321/- as in 2004 is the subject matter of Special Civil Suit No.76 of 2004, the petitioner would be rendered remediless if it is not able to contest the further proceedings. Special Darkhast No. 114 of 2012 (Old No. 107 of 2007) is also one other litigation. He would be rendered defenseless and remediless by the impugned order.

7. The Apex Court in the case of Collector, Land Acquisition

Anantnag and another Vs. Mst. Katiji and others [(1987) 2 SCC 107], has observed while dealing with the application for condonation of delay, as under :-

" 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."*

8. Learned counsel for the petitioner submits that eventually if the petitioner is to succeed, it would not claim any benefits of any nature whatsoever, including the interest component for the period of the delay caused on account of the orders of dismissal in default, which have been passed in the petitioner's matters.

9. I do not find such circumstances emerging from the record, which would indicate that laches or oblique motives could be attributed to the conduct of the petitioner. So also, the petitioner would not benefit by neglecting its proceedings, as it would be prejudicial to its interest.

10. In the above circumstances, costs deserve to be imposed on the petitioner while condoning the delay of 1360 days. Such costs in the usual course could have been awarded to the respondent to reduce the rigors of litigation suffered by it. However, despite the service of court notice through paper publication, the respondent has not preferred to participate in these proceedings. This would not absolve the petitioner from

suffering costs as the petitioner must realize the pinch for neglecting the matters.

11. Considering the above, this petition is partly allowed. The impugned order dated 1.12.2016 is quashed and set aside and MARJI No. 824 of 2014 stands allowed. Delay of 1360 days is condoned subject to costs of Rs.10,000/- to be deposited with the Advocate Association's Bar Library of Bombay High Court, Bench at Aurangabad, within four weeks from today. After depositing the amount, the copy of the receipt shall be produced by the petitioner before the trial Court, on/or before 21.11.2017, before which the MARJI No.817 of 2008 is pending, pursuant to which, the said proceeding shall stand restored. Failure to do so, the impugned order dated 1.12.2016 shall stand restored and the MARJI No.817 of 2008 shall stand dismissed.

(RAVINDRA V. GHUGE, J.)

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