

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.2032 OF 2016

TIKARAM VASUDEO SUPE AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

Advocate for Petitioner : Shri V.B. Patil.
AGP for Respondent Nos. 1 & 2 : Shri N.T. Bhagat.

CORAM : RAVINDRA V. GHUGE, J.
Dated : 01st August, 2017

PER COURT :-

1. The petitioners are before this Court for challenging the judgment and order dated 04th January, 2016, by which, the competent authority, under Section 152 of the Maharashtra Cooperative Societies Act, 1960, has declined to condone the delay of three years, two months and ten days in preferring the proceedings for challenging the order of recovery.

2. Learned counsel for the petitioners has canvassed the grounds raised in the petition and relied upon the judgments of this Court in the matters of Vivek Bhila Patil and another Versus State of Maharashtra and others [2008 (3) BCR 754] and Wares

Educational Trust and another Versus Subhash Bhagwan Khedkar and another [2015 (2) Mh.L.J. 870].

3. It is not in dispute that these seven petitioners have been held guilty of misappropriation, in an enquiry caused under Section 88 of the Maharashtra Cooperative Societies Act. They were Directors of the Society. On an average, a recovery of about Rs. 2,00,000/- as been initiated against the fourteen Directors for a total amount of Rs. 28,239,96/- has in the year 2012. Not a single penny has been till today deposited by any of these seven petitioners before the lower authorities.

4. These seven petitioners have approached the competent authority by filing an appeal under Section 152 of the Act. Application for condonation of delay of three years, two months and ten days was filed. Learned counsel for the petitioners has strenuously canvassed the following grounds for seeking condonation of delay :

(A) The enquiry report under Section 88, though is dated 19/04/2012, was supplied in April, 2015 to the

petitioners. Based on the said report, they have preferred their Appeal and Application for condonation of delay on 20/06/2015.

(B) The authorities have deliberately denied the copy of the report to these petitioners. Though, the recovery certificate was issued by the competent authority on 07/09/2012, it was not properly communicated to the petitioners. Time and again, they applied for copies and yet not supplied the report.

(C) The delay of three years two months and ten days is not deliberate.

(D) The petitioners do not get any advantage by delaying the filing of their appeals.

5. The Hon'ble Apex Court in the matter of Esha_ Bhattacharji Versus Managing Committee Raghunathpur Nafar_ Academy and others, [(2013) 12 SCC 649], has culled out certain principles. The said principles to be considered while condoning delay are as under :

“21. From the aforesaid authorities the principles that

can broadly be culled out are :

21.1 (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.

21.2. (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.

21.3. (iii) Substantial justice being paramount and pivotal the technical considerations should not be given undue and uncalled for emphasis.

21.4. (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.

21.5. (v) Lack of bona fides imputable to a party seeking condonation of delay is a significant and relevant fact.

21.6. (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.

21.7. (vii) The concept of liberal approach has to encapsulate the conception of reasonableness and it cannot be allowed a totally unfettered free play.

21.8. (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.

21.9. (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.

21.10 (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.

21.11. (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.

21.12. (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.

21.13. (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 :

22.1. (a) 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.

22.2. (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.

22.3. (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.

22.4. (d) 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.”

6. It cannot be ignored that this case cannot be equated with the case of a party or a person who has obtained loan and is unable to repay the loan. This is a case where in these petitioners have been held guilty in an enquiry under Section 88 for misappropriation of the money of the depositors, who have invested with the said Society, their hard earned money. In this backdrop, the element of sympathy is ruled out, even for condonation of delay.

7. The petitioners claim that they would not gain any advantage by delaying the filing of their Appeal. It is obvious that in such matters, the delay caused is always to the advantage of such petitioners since they could stall the recovery under different pretexts. It cannot be accepted that these petitioners were trying to collect the copy of the enquiry report for three years. It is also difficult to digest that these petitioners knew nothing about the enquiry and were totally in the dark about the said enquiry. The procedure laid down in the Maharashtra Cooperative Societies Act and the Rules framed thereunder would indicate that these petitioners are attempting to plead ignorance and innocence in so far as the enquiry under Section 88 is concerned. Being delinquent Directors, it is difficult to accept that they were not aware of the enquiry being conducted against their own Society of which they are Directors.

8. Considering the law laid down by the Hon'ble Apex Court in Esha Bhattacharji (Supra) this matter was adjourned on 31/07/2017 to enable the learned advocate for the petitioners to take instructions as to whether the petitioners would show

their bonafides and deposit Rs. 1,00,000/- each with the authority below so that the delay could be condoned and the money could be apportioned/adjusted with the amount to be recovered, without prejudice to their rights and contentions in the appeal. Needless to state, if they would succeed in the appeal, the money could be refunded.

9. Learned counsel for the petitioners submits on instructions from the petitioners who are present in the Court that they may agree to deposit only Rs. 10,000/- each. I do not find the said statement to be a bonafide statement. I once again called upon the learned advocate to take instructions whether the petitioners would deposit Rs. 50,000/- each when the recovery against them with interest by now is more than Rs. 3,00,000/- per petitioner. The learned counsel on instructions submits that these petitioners have flatly refused and would not deposit even a penny beyond Rs. 10,000/-.

10. In so far as the judgment in Vivek Bhila Patil (Supra) is concerned this Court has dealt with the issue of deposit of 50%

of the amount and has held that pre-deposit in the matter of condonation of delay under Section 154 (2A) is not necessary. It is apparent that this Court has called upon these petitioners to make a statement to deposit the amount which was not by way of a statutory deposit, but was to test their bonafides. Keeping in view, that they have been held guilty of misappropriation of public funds and have delayed the matter, they have stalled the recovery. The said judgment, therefore, would be of no assistance to this petitioners.

11. By the impugned judgment, the authority below has concluded that the delay of three years two months and ten days is tried to be explained by these petitioners on the grounds of ignorance and being unable to collect a copy of the enquiry report. In the appeal, the petitioners have challenged the recovery certificate dated 07/09/2012, which they had received well in time. The enquiry report could have been produced before the authority below by the Society along with its written statement or during the proceedings. The authority below has concluded that the ground of ignorance has not been

established being Directors of the Society and after the administrator issued them the recovery notices, they have tried to justify the delay by contending that they are not aware of the enquiry and they do not have the copies of the enquiry report.

12. Taking into account the total effect of the factors as above and in the light of the blunt denial of the petitioners to deposit Rs. 50,000/- each, so that the delay could be condoned by balancing the equities, I do not find that these petitioners deserve any sympathy. The case of these petitioners is squarely covered by clauses 21.2 (iii), 21.5 (v), 21.10 (x) and 22.4 (d), reproduced above from the Esha Bhattacharji judgment (supra). Considering the above, I do not find that the impugned order could be termed as being perverse or erroneous. This petition being devoid of merits, is therefore, dismissed.

(RAVINDRA V. GHUGE, J.)