

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

CIVIL APPLICATION NO. 10674 OF 2014
IN SAST/4648/2014

MADHAVRAO IROJI LAKDE DIED LRS NAMDEO AND ANOTHER
VERSUS
YADHAVRAO IROJI LAKDE AND ANOTHER

...
Advocate for Applicants : Shri U.R.Awate h/f Shri Talekar S.B..
Advocate for Respondents : Shri Natu Sharad V.
...

CORAM: SUNIL P. DESHMUKH, J.

DATE :- 05th May, 2017

Per Court:

1 Heard the learned counsel appearing for the parties.

2 Learned counsel for the Applicants refers to that till decision was rendered in Regular Civil Appeal No.47/2008 on 29.06.2012, their father had been looking after the litigation. Applicants were not aware about the litigation and developments therein. Soon after the decision, on 04.07.2012 their father died. However, since 05.07.2012 Applicant No.1 had been advised complete rest till 04.11.2013. Applicant No.2 had been busy looking after Applicant No.1 and had been engaged in agricultural operations as the agriculture happens to be the only source of income for eking out existence of the family. After November, 2013, quite sometime

had been consumed in making financial preparations for going ahead against the decision rendered on 29.06.2012. All these circumstances could not make it possible to approach earlier. In the circumstances, there is delay of 519 days. It is further submitted that the Applicants have good case on merits.

3 Learned counsel for the Respondents, however, resists the contentions submitting that may be the Applicant No.1 had been ailing, however, Applicant No.2 could have approached this Court earlier. He submits that the excuse that him being engaged looking after the Applicant No.1 and in the agricultural operations, is a run away reason. He submits that it would not be sufficient cause for condonation of delay. Alternatively, he submits that in case the Court is inclined into request for condoning delay, heavy costs be imposed.

4 Although the learned counsel for the Respondents has resisted the application, he does not seriously dispute veracity of the contention that Applicant No.1 had been ailing and the Applicants' father died immediately after the decision was rendered on 29.06.2012 and further that it was the deceased father who had been looking after the litigation and developments therein. Though the learned counsel for the Respondents purports to contend that the Applicant No.2 being taking

care of his brother is a run away excuse, it has not been brought on record by placing credible material that the Applicant No.2 had been doing something else and was not looking after the Applicant No.1, nor does it appear to be the matter of serious dispute that after November, 2012, the Applicants took some time for preparations to approach this Court.

5 As such, it appears that the circumstances warrant, and, taking into account the guidelines of supreme court in the case of *Collector, Land Acquisition, Anantnag v/s. Ms. Katiji and others* reported in **AIR 1987 SC 1353**, paragraph no.3 thereof, reading thus,

“ 3. The legislature has conferred the power to condone delay by enacting S. 5 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) Ordinarily a litigant does not stand to benefit by lodging an appeal late;

(2) Refusing to condone delay can result in 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 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 hours delay, every seconds 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 was no presumption that delay is occasioned deliberately, or on account 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. ”

as also, guidelines issued by supreme court under its decision, in the case of *Esha Bhattacharjee V/s. Managing Committee of Raghunathpur Nafar Academy and others* reported in **(2013) 12 Supreme Court Cases 649**, as contained in paragraphs no. 21 and 22 thereof, reading thus,

“ 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 scrutinized 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 half hazard 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 Considering guidelines of supreme court referred to in the aforesaid two judgments, it would be expedient, and, in the interest of justice, to indulge into the request for condonation of delay subject, of

course, to the payment of costs compensating to some extent inconvenience caused to the Respondents.

7 As such, this Civil Application stands granted in terms of prayer clause (A) subject to payment of costs of Rs.10,000/- (Rupees Ten Thousand) which shall be deposited by the Applicants before the District Court, within a period of EIGHT WEEKS from today.

kps

(SUNIL P. DESHMUKH, J.)