

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

SECOND APPEAL NO. 584 OF 2016

- 1] Hamid @ Hanifsab S/o Sultansab Pinjari,
Age : 54 years, Occu.: Agri/labour,
R/o Bembra, Tq. Degloor,
Dist. Nanded .. Appellant

VS.

- 1] Sarjabai W/o Dhondiba Auti,
Age : 50 years, Occu.: Household
- 2] Balaji S/o Dhondiba Auti,
Age : 11 years, Occu.: Nil,
U/g of respondent no.1
- 3] Renuka D/o Dhondiba Auti,
Age : 25 years, Occu.: Household
- 4] Surekha D/o Dhondiba Auti,
Age : 23 years, Occu.: Houshold
- 5] Shanubai D/o Dhondiba Auti,
Age : 20 years, Occu.: Household

All R/o Yedur [Bk], Tq. Degloor,
Dist. Nanded

- 6] Dhondiba S/o Hulla Auti,
Age : 59 years, Occu.: Agri.,
R/o Sopur, Mandal, Jukkal,
Court, Bichkunda,
Dist. Nizamabad (Telangana)
- 7] Kishan Laxman Pitlewar,
Age : 67 years, Occu.: Agri.,
R/o Bembra, Tq. Degloor,
Dist. Nanded .. Respondents

Mr. U.B. Deshmukh, Advocate for the appellant

Mr. T.G. Gaikwad, Advocate for respondents no.1, 3 and 5

None present for respondents no.2, 4 and 6, though served

CORAM : SUNIL P. DESHMUKH, J.

DATE : 18-04-2017

ORAL JUDGMENT :

1. Heard learned counsel for the parties.
2. The substantial question in the present matter, which appears to have arisen for consideration, is,

“ Whether the appellate court had approached the matter taking up a proper perspective while deciding the application for condonation of delay, in preferring regular civil appeal against the decree passed in regular civil suit no. 94 of 2001 ? ”

3. After hearing learned counsel on either side, it transpires that the appellant/applicant had made quite a few purchases of land from defendant no.1 and quite a few from the alienees from defendant no.1. It further appears that plaintiffs are wife and children of defendant no.1. The family appears to have substantial land holdings, and, from the same, according to learned counsel for the appellant, he is concerned with not only 45 Are of land but much more and, that could not be brought forth before the trial court since

the appellant had to remain away from station, eking out existence, and, had been in Andhra Pradesh.

4. Learned counsel for the appellant further adverts to that the lawyer engaged on behalf of the appellant had later on joined judicial services, and, as such, the matter during the pendency of suit could not be prosecuted. Appellant being unaware of the legal procedure involved, and, during the time the decision had been rendered, his pecuniary position had forced him to be away from station. However, as soon as he became aware through notice in execution, he had moved to challenge the decree in appeal alongwith application for condonation of delay. According to learned counsel, aforesaid circumstances constitute sufficient cause for condonation of delay.

5. Learned counsel Mr. T.G. Gaikwad for the respondents, however, submits that the delay of 3 years and odd days being enormous, and, appears to be cursorily accounted for. Aforesaid apart, he submits that trial court's judgment preserves the purchase, as referred to in the judgment, made by the present appellant. In the circumstances, the appellant's case has been taken care of. Learned counsel further submits that appellate court has taken into account the manner in which the matter has been prosecuted before trial court, and, submits that it has been rightly

adjudged and refused to condone the delay. He therefore purports to support the order.

6. Perusal of annexures in the paperbook of second appeal and 'Say' filed on behalf of plaintiffs reveal that contents of the application for condonation of delay, about appellant being away from Maharashtra eking out his existence, and, had been in Andhra Pradesh, have not been disputed. Further perusal of the order would depict that largely rather than the reasons accounting for condonation of delay contained in application, the court had been enamored more by past conduct during the suit.

7. In the circumstances, it appears that cause which has been shown and pressed into service seeking condonation of delay has been relegated to the background, and the order seldom reflects any application of mind to the same, save cursory reference.

8. 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. ”

9. Considering guidelines of supreme court referred to in the aforesaid two judgments, it would be expedient, and, in the interest of justice, to condone delay.

10. The approach of court while deciding the application for condonation of delay in preferring appeal against judgment and decree of trial court can seldom be said to be following the guidelines of the supreme court referred to in the aforesaid two judgments. As such, the substantial question referred to above stands answered accordingly.

11. Inconvenience caused in the process to the other side can be taken care of by imposing costs on the applicant-appellant.

12. The decision of appellate court dated 12-11-2014 in Misc. R.J.E. no. 8 of 2009 stands set aside. Misc. R.J.E. No. 8 of 2009 stands allowed. Appeal accordingly would be proceeded with.

13. Aforesaid order, of course, is subject to payment of costs of Rs.15,000/- (Rs. Fifteen Thousand). Costs to be deposited before appellate court within a period of eight (8) weeks from today.

14. In case of failure to deposit costs within aforesaid period, this order, granting M.A.R.J.E. no. 8 of 2009 stands recalled, and, the order of first appellate court, would stand revived without further reference to this court.

15. Appellate proceedings be proceeded with, as expeditiously as possible, preferably within a period of nine (9) months from 05-06-2017.

16. Upon deposit of costs, the plaintiffs would be entitled to withdraw the same.

17. Second appeal is allowed. In view of disposal of second appeal, pending civil applications no.3586 of 2015, and, 11291 of 2016 filed in the present appeal, also stand disposed of.

[SUNIL P. DESHMUKH]
JUDGE

arp/