

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

908 WRIT PETITION NO. 7951 OF 2017

PRAMILABAI SHALIK PATIL AND OTHERS
VERSUS
SAMEER MADHAVRAO CHAVAN AND OTHERS.

WITH
WRIT PETITION NO.7950 OF 2017

MANGALABAI BHIKAN PATIL.
VERSUS
SAMEER MADHAVRAO CHAVAN AND OTHERS.

WITH
922 WRIT PETITION NO. 11343 OF 2017

WALMIK MEETHAJI DIGHOLE AND OTHERS
VERSUS
SAMEER MADHAVRAO CHAVAN AND OTHERS

WITH
WRIT PETITION NO.8291 OF 2017

SUSHILABAI RAJDHAR PATIL.
VERSUS
SAMEER MADHAVRAO CHAVAN AND OTHERS.

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Advocate for the Petitioners in WP/7950 and 7951 : Shri Paresh B. Patil.

Advocate for the Petitioners in WP/11343 and 8921 : Shri Sangeet
Minakshi L..

Advocate for Respondents 1 to 5 : Shri A.V.Deshmukh.

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CORAM: RAVINDRA V. GHUGE, J.

DATE :- 12th October, 2017.

Per Court:

1 Since the issue is common, by consent of the parties, Writ
Petition Nos.7950/2017 and 8921/2017, which are not on Board, are also
taken up for hearing.

2 In these petitions, the Petitioners are aggrieved by the
impugned order dated 05.04.2017 by which the Maharashtra Revenue
Tribunal has refused to condone the delay of 12 days and the applications
for condonation of delay dated 16.01.2017 have been rejected.

3 I have considered the submissions of the learned Advocates
for the respective sides.

4 Shri Deshmukh, learned Advocate for the Respondents, has
strenuously opposed these petitions for the following reasons:-

- (a) The revisions were filed on 27.05.2016 and there was a delay
 of 12 days.
- (b) Though the Tribunal granted several opportunities to the
 Petitioners to tender the application for condonation of delay,
 no application was filed till 16.01.2017.
- (c) On not less than four dates, the matter was taken up by the
 Tribunal hoping that the Petitioners would file their
 application for condonation of delay, but in vain.
- (d) The delay is deliberate and intentional.

- (e) The Petitioners desire to harass the Respondents by keeping the matter pending and involving the Respondents in litigation.
- (f) If this Court is inclined to entertain these petitions, heavy costs be imposed and the said costs could be donated to the High Court Legal Services Authority, Aurangabad Bench, Aurangabad.

5 I find that the revisions were preferred on 22.05.2016. The Petitioners were under the belief that there is no delay in the matter. The Respondents were constantly insisting that there is delay which the Tribunal also noticed. It is settled law that once there is delay, the proceedings cannot be registered until the delay is condoned.

6 Shri Deshmukh is right in submitting that all these revisions were kept pending due to laxity on the part of the Petitioners and though they were intimated that delay can be condoned only by filing the application for condonation of delay, no steps were taken by these Petitioners.

7 It needs mention that the Honourable Supreme Court, in the matter of the *Collector, Land Acquisition, Anantnag v/s Mst.Katiji*, **AIR 1987 SC 1353**, has observed in paragraph 3 as under:-

“3. The legislature has conferred the power to condone delay by enacting Section 51 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:-

"Any appeal or any application, other than an application under any of the provisions of Order XXI of the Code of Civil Procedure, 1908 may be admitted after the prescribed period if the appellant or the applicant satisfies the court that he had sufficient cause for not preferring the appeal or making the application within such period."

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.

Making a justice-oriented approach from this perspective, there was sufficient cause for condoning the delay in the institution of the appeal. The fact that it was the State which was seeking condonation and not a private party was altogether irrelevant. The doctrine of equality before law demands that all litigants, including the State as a litigant, are accorded the same treatment and the law is administered in an even handed manner. There is no warrant for according a stepmotherly treatment when the State is the applicant praying for condonation of delay. In fact experience shows that on account of an impersonal machinery (no one in charge of the matter is directly hit or hurt by the judgment sought to be subjected to appeal) and the inherited bureaucratic methodology imbued with the note-making, file pushing, and passing-on-the-buck ethos, delay on its part is less difficult to understand though more difficult to approve. In any event, the State which represents the collective cause of the community, does not deserve a litigant-non-grata status. The Courts therefore have to be informed with the spirit and philosophy of the provision in the course of the interpretation of the expression "sufficient cause". So also the same approach has to be evidenced in its application to matters at hand with the end in view to do even-handed justice on merits in preference to the approach which scuttles a decision on merits. Turning to the facts of the matter giving rise to the present appeal, we are satisfied that sufficient cause exists for the delay. The order of the High Court dismissing the appeal before it as time barred, is therefore, set aside. Delay is condoned. And the matter is remitted to the High Court. The High Court will now dispose of the appeal on merits after affording reasonable opportunity of hearing to both the sides."

8 The Honourable Supreme Court, in the matter of *Esha Bhattacharjee v/s Managing Committee of Raghunathpur Nafar Academy*, **(2013) 12 SCC 649**, has also culled out certain principles on which the applications for condonation of delay can be considered.

9 It is trite that the condonation of delay has to be construed liberally, except in cases where laches, oblique motives and an intention to deliberately cause the delay, are apparent. It has to be considered by the Court as to whether, the litigating sides would be rendered remedy-less, if the delay is not condoned.

10 It appears from the facts of this case that the revisions were tendered without the applications for condonation of delay. Nevertheless, even if it is accepted that the delay is about six months, it cannot be termed as being inordinate or deliberate and not worthy of being condoned. These Petitioners would be rendered remedy-less if the delay is not condoned.

11 Considering the above, these Writ Petitions are allowed in terms of prayer clause (A) of Writ Petition Nos.8291/2017 and 11343/2017 and prayer clause (B) of Writ Petition Nos.7950/2017 and 7951/2017. Delay caused in filing the revisions is condoned by imposing costs of Rs.1000/- (Rupees One Thousand) in each petition and the same should be deposited with the High Court Legal Services Authority,

Aurangabad Bench, Aurangabad within a period of FOUR WEEKS from today, failing which the impugned order shall stand restored and these petitions shall stand dismissed.

12 Needless to state, the Petitioners shall produce the copy of the deposit of money before the Maharashtra Revenue Tribunal on 17.11.2017 to evidence the payment of costs, after which the Tribunal shall register the revisions. The litigating sides agree to appear before the Tribunal on 17.11.2017 and hence, formal notices need not be issued by the Tribunal.

13 The Tribunal shall note that in the event of any monetary benefit becomes available to the Petitioners, if they succeed in the tenancy revisions, it shall deprive the Petitioners of the interest and ancillary components for the period from the date of lodging of the revisions till the order of this Court.