

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

WRIT PETITION NO. 5553 OF 2016

BHAURAO CHAVAN SAHAKARI SAKHAR KARKHANA LTD.
VERSUS
UTTAM DATTARAM JAGDAMBE AND ANOTHER.

...
Advocate for Petitioner : Shri Ghatol Patil Shahaji B.

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CORAM: RAVINDRA V. GHUGE, J.

DATE :- 25th January, 2017

Oral Order:

1 The Petitioner is aggrieved by the judgment of the Labour Court dated 01.08.2015 by which the application for condonation of delay of 04 years, 07 months and 12 days filed by Respondent No.1 has been allowed. The Petitioner is also aggrieved by the judgment of the Industrial Court dated 29.03.2016 by which Revision (ULP) No.48/2015 has been dismissed by the Industrial Court.

2 I have heard the learned Advocate for the Petitioner for quite sometime. Despite the notices having been served upon the Respondents, none have caused an appearance either through an Advocate or in person.

3 There is no dispute that the ULP complaint preferred by

Respondent No.1/Workman suffered from delay of 04 years, 07 months and 12 days. Rule 61 of the Labour Courts (Practice and Procedure) Rules, 1975 prescribes the limitation of 90 days. Rule 61 reads as under:-

"61. *If a complaint under Section 28 covers any unfair labour practice which occurred more than 90 days before the date the complaint was filed, the complainant shall file alongwith the complaint a separate application, for condonation of delay. That application shall disclose separately and specifically each unfair labour practice which occurred more than 90 days after the complaint was filed and in respect of which the condonation of delay is sought, the date of the occurrence thereof and the reasons for condonation of delay in respect thereof. Such an application shall be supported by an affidavit.*"

4 It is, therefore, apparent that if a complaint is preferred beyond 90 days, a separate application for condonation of delay is to be filed and the same is required to be supported by an affidavit. This part of the rule has been complied with by Respondent No.1. Rule 61 further mandates that the application for condonation of delay should disclose specifically and separately, each of the unfair labour practices which have occurred more than 90 days after the complaint was filed. In short, it is expected that the delay is required to be reasonably explained, though an explanation about each day's delay is not expected.

5 I find that Respondent No.1 has filed his application for

condonation of delay which contains three paragraphs. The reasons explaining away the delay of 04 years, 07 months and 12 days in paragraph 2 of the application read as under:-

"2. *That, to file the complaint there is a delay of days has been caused to the applicant. After terminating the service the applicant have requested orally to the respondents to reinstate him in the service, but the respondent have ignored his request. Therefore the applicant has been mentally disturb at the same time he failed till, so also some family problems have been developed in his family, therefore he could not filed the complaint within prescribed time of limitation and therefore the delay of 4 Y 7 M 12 days has been caused.*"

6 It is, therefore, apparent that the bald statement that the workman was mentally disturbed and there are some family problems and therefore, he did not file his complaint within time, cannot constitute a proper explanation and by no stretch of imagination, it could be termed as being a reasonable explanation for condoning the delay.

7 The Honourable Supreme Court in *Esha Bhattacharjee v/s Managing Committee of Raghunathpur Nafar Academy*, **(2013) 12 SCC 649**), after considering the extensive case law on the point of condonation of delay, has culled out the principles which need to be followed while condoning the delay. The said principles evolved by the Honourable Supreme Court read as under:-

"21. From the aforesaid authorities the principles that can broadly be culled out are:

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.

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.

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

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.

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

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.

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

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.

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.

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.

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.

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.

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 :-*

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.

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.

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.

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.”

put forth by Respondent No.1 can neither be termed as being a reasonable explanation, nor an acceptable explanation. The said application, therefore, fails the test as laid down by the Honourable Supreme Court in Esha Bhattacharjee judgment (supra).

9 The Labour Court, while delivering the impugned order dated 01.08.2015, has passed a cryptic order. On the one hand, it has concluded that the Applicant has not filed any document in support of his contention and on the other hand, it has placed reliance upon the judgment of this Court in the matter of *Sonerao Patil vs. Godawaribai Gahirewar*, **1999(2) Mh.L.J. 272**, which is a judgment on the Limitation Act concluding that a liberal approach should be adopted. I find that the impugned order clearly indicates non application of mind. Adopting a liberal approach does not mean that the application for condonation of delay which contains no reason except saying that the Applicant was mentally disturbed, could have been allowed by condoning the delay of 04 years, 07 months and 12 days. The view taken by the Labour Court is apparently in opposition to the principles culled out in paragraphs 21 and 22 of the Esha Bhattacharjee judgment (supra) which are reproduced as above.

10 I find that the Industrial Court has failed to apply its mind

and has dismissed the revision petition of the Petitioner as if it is a mere formality. Though the revisional powers of the Industrial Court under Section 44 of the MRTU & PULP Act, 1971 are limited, they are not so limited that the Industrial Court should not go through the proceedings and find out whether, the conclusions of the Labour Court are perverse and erroneous. The Industrial Court could not have abdicated its powers by concluding that the explanation submitted by the Applicant is pardonable explanation. For these reasons, the impugned judgment of the Industrial Court dated 29.03.2016 deserves to be quashed and set aside.

11 In the light of the above, this Writ Petition is allowed. The impugned judgments dated 01.08.2015 and 29.03.2016 stand quashed and set aside. Miscellaneous (ULP) No.33/2013 filed by Respondent No.1/ Applicant stands rejected.

12 However, it needs mention that Respondent No.1/ Workman is not rendered remedy-less considering that he can raise an industrial dispute against his oral termination under Section 2(A) of the Industrial Disputes Act, 1947 and his dispute can be referred to the competent Labour Court for adjudication.