

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.9127 OF 2016
(Abdul Aziz and Co. Vs. The State of Maharashtra and others)

Mr.G.K.Thigale, Advocate for the petitioner.
Mr.S.P.Deshmukh, AGP for respondent Nos. 1 and 2.

(CORAM : Ravindra V.Ghuge, J.)

DATE : 03/08/2017

PER COURT :

1. The petitioner is aggrieved by the order dated 18/07/2016 by which MARJI No.163/2013 has been rejected and the delay of 1300 days has not been condoned. The order of dismissal in default dated 17/11/2008 is sustained.

2. I have considered the submissions of the learned Advocates for the respective sides. Learned Advocate for the petitioner makes a statement on instructions that the petitioner / LR of the original plaintiff would not seek interest on the amount to be recovered, from the date of the order of dismissal 17/11/2008 till the passing of this order today.

3. The original plaintiff had preferred Special Civil Suit No.29/1984 claiming recovery of Rs.2,35,391/- from the Public

Works Department, Aurangabad. The said claim was on account of the construction of 300 police quarters. The plaintiff was 60 years of age in 1984 when the suit was instituted. Due to failing health, he could not keep contact with his Advocate and that resulted in the dismissal of the suit in default on 17/11/2008. This aspect was not brought to the notice of the plaintiff by his Advocate. Subsequently, due to several ailments and old age, the original plaintiff passed away on 10/10/2012. The petitioner herein had no knowledge about the Special Civil Suit No.29/1984 and was oblivious of its dismissal on 17/11/1985.

4. It is submitted that the petitioner acquired the knowledge about the said suit from the Will-deed executed by the deceased plaintiff on 03/09/2012 which is about 5 weeks prior to the passing away of the deceased plaintiff. The Will-Deed indicates about the construction work undertaken by the deceased plaintiff and hence the petitioner acquired the knowledge of the said proceedings. Upon collecting necessary papers, the petitioner moved MARJI No.163/2013 on 05/02/2013.

5. It is trite law that in matters of condonation of delay, the Courts can adopt a liberal approach provided malafides, laches and

oblique motives are not attributed to the conduct of the applicant. In Collector, Land Acquisition Anantnag and another Vs. Mst. Katiji and others [(1987) 2 SCC 107], the Hon'ble Apex Court has held in paragraph No.3 as under :-

" 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."

6. The Hon'ble Apex Court has culled out certain principles for

condonation of delay in Esha Bhattacharjee Vs. Managing committee of Raghunathpur Nafar Academy and others [(2013) 12 SCC 649] and in the matter of Chakreshwari Constructions Pvt.Ltd.,Vs. Manohar Lal [2017(5) SCC 212].

7. It is obvious that the plaintiff was about 87 years of age when his suit was dismissed in default. He was in failing health and subsequently passed away on 10/10/2012. It is possible that his Advocate may not have informed him of the dismissal of the suit. I do not find laches or malafides being attributed to the conduct of the plaintiff. He was about 88-89 years of age when he passed away. The petitioner, who is the legal heir of the deceased, has made a statement that in the event the suit is allowed and he is entitled for recovery of money from the respondents, he would not claim interest on the said amount for the period 17/11/2008 till 03/08/2017.

8. I find that if the application for condonation of delay in the above backdrop is rejected, the petitioner would be rendered remediless and his claim for recovery of Rs.2,35,391/- as in 1984 would stand buried.

9. Considering the above, this petition is partly allowed. The

impugned order dated 18/07/2016 is quashed and set aside. MARJI No.163/2013 is allowed on the condition that the petitioner or his representatives or assignees, would not be entitled for any interest on the amount, if is decreed by the Trial Court, for the period 17/11/2008 till 03/08/2017 and no claim for interest for this period would be entertained by the Trial Court.

10. As such, Spl.Civil Suit No.29/1984 shall be restored to the file of the Trial Court. The petitioner would co-operate for the expeditious disposal of the said suit and the parties shall refrain from seeking adjournments on unreasonable and trivial grounds. The Trial Court would be at liberty to impose costs on the parties if unnecessary adjournments are sought.

11. The litigating sides agree to appear before the Trial Court on 28/08/2017. Notices therefore need not be issued. The petitioner shall forthwith add himself as the legal heir of the deceased/original plaintiff. The Trial Court shall endeavour to decide the said suit as expeditiously as possible, and in any case on or before 31/03/2018.

(Ravindra V.Ghuge, J.)