

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.10011 OF 2016

Digambar S/o Ramkrishna Patil

Petitioner

Versus

Sumitrabai w/o Ramkrishna Patil & others

Respondents

Mr. J .M. Wagh advocate for the petitioner

Mr. B.K. Patil advocate for Respondent Nos.1 to 3

CORAM : RAVINDRA V. GHUGE, J

(Date : 10th July, 2017.)

PER COURT :-

1 The petitioner is aggrieved by the order dated 22.8.2016 passed by the learned DJ-II, Aurangabad, by which MARJI No.394/2011 has been rejected.

2 I have considered the submissions of the learned advocates for quite some time.

3 RCS No.19/2003 was decided by the Judgment dated 28.9.2006. There-after, the petitioner preferred an Appeal along with an Application for condonation of 2 days delay bearing MARJI No.4/07. The Application for condonation of delay was dismissed in default on 17.6.2011. Thereafter, the petitioner preferred Application MARJI No.394/2011 seeking condonation of

delay of about 78 days, caused in filing another Application for restoration of MARJI No.4/07. By the impugned order, MARJI No. 394/2011 was rejected for the reason that sufficient grounds have not been made out for condoning the delay of about 78 days.

4 Learned counsel for the respondents – decree holders, has strenuously defended the impugned order and prays for the dismissal of this petition. In the alternative, he prays for heavy costs.

5 It is trite law that, when it comes to an Application for condonation of delay, normally, the Court has to be liberal and by taking a pragmatic view, the delay can be condoned, except in cases, where oblique motives or laches on the part of the applicant are made out. If there is no malafide intention in causing the delay, the delay can be condoned and if the delay is inordinate and deliberate, the application can be rejected.

6 In the instant case, the agricultural land is at issue. The petitioner, who has suffered the decree and is facing execution proceedings, has hopes only from his Appeal, lest, he would be rendered remedyless. Delay of only two days was caused in preferring the Appeal and to the misfortune of the applicant, MARJI No.4/07, seeking condonation of delay of two days was

dismissed in default. Similarly, there is a delay in filing MARJI No. 394/2011.

7 In the above backdrop, it is apparent that the delay caused is neither deliberate, nor inordinate. Nevertheless the hardship and inconvenience caused to the respondents cannot be ignored.

8 Learned counsel Mr. B. K. Patil appears for respondent Nos. 1, 2 and 3. Rest of the respondents, though served, are absent in the proceedings.

9 The Honourable Apex Court in the matter of **Collector, Land Acquisition, Anantnag versus Mst. Katiji & others** (AIR 1987 SC 1353) has observed in paragraph No.3 as under:-

" 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 meaning- ful 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 malafides. 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. Appeal is allowed accordingly. No costs. "

10 It, therefore, emerges from the record that, on the one hand the petitioner appears to be negligent and on the other, he would be rendered remedyless as the refusal to condone delay, his appeal would never be taken up for adjudication. I am of the view that the learned Appeal Court, while passing the impugned order could have considered the above stated aspects and by imposing costs, could have condoned the delay to ensure that the ends of justice are met.

11 Considering the above, this petition is partly allowed.

12 The impugned order dated 22.2.2016 is quashed and set aside and application MARJI No.394/2011, seeking condonation of about 78 days delay is allowed and the delay is condoned on payment of costs of Rs.7,500/- to be deposited before the Appeal

Court which can be withdrawn only by respondent no.1 Sumitrabai w/o Ramrishna Patil, respondent No.2 Jayshree Pravin Patil and respondent No.3 Janardhan Ramrishna Patil who have appeared in this proceedings. They shall withdraw the costs without conditions.

13 Needless to say, the petitioner shall deposit the said costs within a period of four weeks from today pursuant to which the restoration application only i.e. MARJI No.3/2007 shall be restored and shall be adjudicated upon on its own merit.

(RAVINDRA V. GHUGE , J)