

IN THE HIGH COURT OF BOMBAY AT GOA

Misc. Civil Application No.424/2017

In

STM No.437/2017

The State of Goa through Chief Secretary
and another.

Applicants

Versus

Travel Corporation (India) Ltd.

Respondent

....

Ms. Amira Abdul Razaq, AGA for the applicants.
Mr. Sudesh Usgaonkar, Advocate with Ms.R.Pereira,
Advocate for the respondent.

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CORAM : PRITHVIRAJ K.CHAVAN, J.
ORDER RESERVEDE ON : 16/08/2017
ORDER PRONOUNCED ON :21/08/2017.

ORDER :

There was a delay of 247 days in preferring an appeal against the impugned order dated 10.2.2016 passed by the learned District Judge-1, Panaji, in Civil Suit bearing No.39/2014 and, therefore, the State has moved an application for condonation of delay under Section 5 of the Limitation Act.

2. Heard Ms. Amira Razaq, learned Assistant Government Advocate for the applicants and Shri Sudesh Usgaonkar, learned counsel for the respondent.

3. The impugned order was passed on 10.2.2016. An application for certified copy was made on 11.2.2016 and it was delivered to the applicants on 8.3.2016. It is submitted that the record of file was under the process of the Government for filing Civil Revision Application to challenge an order dated 30.7.2015, whereby the District Judge had rejected an application under Order VII Rule 11 of CPC filed by the applicants. It is further stated that the matter was referred for legal opinion on 30.5.2016. It entered in the department on 30.6.2016 stating that it is a fit case for challenge. Thereafter the file was re-submitted to the Legal Department for its legal opinion.

4. It is further stated that on 18.10.2016 the Superintendent (Legal) put up a note that the impugned order needs to be challenged and, as such, the proposal was approved by the Under Secretary (Law) on the very next date i.e. 19.10.2016. It was further approved by the Law Secretary on 21.6.2016 and by the Power Minister on 8.11.2016 and thereafter by the Chief Minister on 16.11.2016. Thereafter the learned Advocate General marked the file and appointed Government Advocate on 17.11.2016. Certain documents were required by the Government

Advocate and, therefore, the file was re-compiled and re-submitted to the Government Advocate on 8.12.2016. The draft appeal was prepared by the Government Advocate on 30.12.2016 and submitted for approval of the Government. The Government's approval came on 7.2.2017 and thereafter the application for condonation of delay was filed on 7th February 2017 itself.

5. The learned AGA for the applicants further submits that after the impugned order the file was sent to the Government by the Chief Electrical Engineer of Electrical Department, Panaji. Thereafter, it was referred by the Law Department (Estb.) to the Law Department (Legal) for their opinion in the matter. The Superintendent (Legal) opined that the matter does not fall within the purview of Sections 126 and 127 of the Electricity Act, 2003 and, therefore, Section 145 was not attracted and, as such, referred the file for necessary action. Subsequently, the Government Advocate strongly opined on 30.5.2016 to file present Appeal from the Order, which was received in the office of the Assistant Engineer Electrical Department on 30.6.2016.

6. As such, after receiving the nod from various

departments finally it was forwarded to the learned Advocate General for an appointment of the Government Advocate to file the present appeal from the order.

7. It is further submitted that the file was allotted to the erstwhile Government Advocate on 17.11.2016. The draft prepared by the Government Advocate was approved by the Government on 7.2.2017. However, the erstwhile Government Advocate to whom the matter was allotted failed to file an Appeal from the Order. As such, the learned AGA prays for condoning the delay, as according to her, no prejudice would be caused to the respondent whereas if the delay is not condoned, a great prejudice would be caused to the Government Exchequer as huge amount of electricity charges is due to the respondent.

8. In reply, it is stated by the learned counsel for the respondent that there is no sufficient cause shown by the applicants to condone the delay, as it is a gross delay of eight months wherein a very casual and routine manner delay is sought to be condoned wherein the limitation had already expired on 5.6.2016. It is also submitted that the learned Additional Government Advocate handling the matter

before the lower Court was aware of the facts and, therefore, there was no requirement of allotting the file to him for opinion back and forth. The period of limitation was allowed to be expired without taking any effective steps by the applicants which has taken the Court for granted. It is also stated that what has been stated in para 11 of the application about referring the matter for opinion of the Law Department regarding Section 145 and reference to the order dated 30.7.2016 passed by the Additional District Judge rejecting the application under Order VII Rule 11 of CPC filed by the applicants is only to confuse and mix up and only to cover up the inordinate delay. It is stated that pending the challenge to the order of dismissal of application for rejection of plaint was no impediment to challenge an independent order dated 10.2.2016 granting temporary injunction in favour of the respondent. The applicants cannot seek condonation of delay by making false attempt to blame the Government Advocate by not filing the appeal after 17.11.2016. The respondent has, therefore, contended that the application needs to be dismissed.

9. It is a well settled principle of law that the expression "Sufficient Cause" as employed in Section 5 of the Limitation

Act, 1963 and similar other statutes is elastic enough to enable the Courts to apply the law in a meaningful manner which subserves the ends of justice. Although, no hard and fast rule can be laid down in dealing with the applications for condonation of delay, it is held by the Hon'ble Supreme Court that adoption of a liberal approach in condoning delay of short duration and stricter approach where the delay is inordinate. The learned counsel for the respondent has placed reliance on various authorities. In case of *Oriental Aroma Chemical Industries Limited Vs. Gujarat Industrial Development Corporation and another* **(2010) 5 SCC 459**, it is observed in paragraphs 14, 16, 25 and 27 thus:

"14. We have considered the respective submissions. The law of limitation is founded on public policy. The legislature does not prescribe limitation with the object of destroying the rights of the parties but to ensure that they do not resort to dilatory tactics and seek remedy without delay. The idea is that every legal remedy must be kept alive for a period fixed by the legislature. To put it differently, the law of limitation prescribes a period within which legal remedy can be availed for redress of the legal injury. At the same time, the courts are bestowed with the power to condone the delay, if sufficient cause is shown for not availing the remedy within the stipulated time.

16. In dealing with the applications for condonation of delay filed on behalf of the State and its agencies/instrumentalities this Court has, while emphasizing that same yardstick should be applied for deciding the applications for condonation of delay filed by private individuals and the State, observed that certain amount of latitude is not impermissible in the latter case because the State represents collective cause of the community and the decisions are taken by the officers/agencies at a slow pace and encumbered process of pushing the files from table to table consumes considerable time causing delay - *G. Ramegowda v. Spl. Land Acquisition Officer, State of Haryana v. Chandra Mani, State of U.P. v. Harish Chandra, State of Bihar v. Ratan Lal Sahu* (1996) 10 SCC 635, *State of Nagaland v. Lipok Ao*, and *State (NCT of Delhi) V. Ahmed Jaan*.

25. From what we have noted above, it is clear that the Law Department of respondent No.1 was very much aware of the proceedings of the first as well as the second suit. In the first case, Ms. Rekhaben M. Patel was appointed as an advocate and in the second case Shri B.R. Sharma was instructed to appear on behalf of the respondents, but none of the officers is shown to have personally contacted either of the advocates for the purpose of filing written statement and preparation of the case and none bothered to appear before the trial Court on any of the dates of hearing.

27. In our view, the above statement contained in para 1 of the application is not only incorrect but is ex facie false and the High Court committed grave error by condoning more than four years' delay in filing of appeal ignoring the judicially accepted parameters for exercise of discretion under [Section 5](#) of the Limitation Act”.

10. Thus, it is clear that while dealing with the applications for condonation of delay filed on behalf of the State and its agencies, same yardstick should be applied for deciding the applications for condonation of delay filed by private individuals. However, certain amount of latitude is not impermissible in the latter cases because the State represents collective cause of the community and the decisions are taken by the officers/agencies at a slow pace and encumbered process of pushing the files from table to table consumes considerable time causing delay. The Hon'ble Supreme Court has also considered the case laws in *G.Ramegowda Vs. Land Acquisition Officer* [(1988) 2 SCC 142], *State of Haryana Vs.Chandra Mani* [(1996) 3 SCC 132], *Tahsildar, Land Acquisition vs. K.V. Ayisumma* [(1996) 10 SCC 634], *Punjab Small Industries and Export Corpn. Ltd. Vs. Union of India* [1995 Supp (4) SCC 681], *P.K.Ramachandran Vs. State of Kerala* [(1997) 7 SCC 556] and *Collector (L.A.)*

V. Katiji [(1987) 2 SCC 107].

11. Though, it is vehemently argued by learned counsel for the respondent that in view of the contents of paragraph 7 of the application, there is no plausible explanation as to what the applicants has been doing from 30th June 2016 to 18th October 2016 to which it is replied by the learned counsel for the applicants that the file was re-submitted to the Law Department for Legal opinion, where there are no advocates or Legal Experts. In the Government Machinery, it takes time to move the files looking to the enormous work on each table. No doubt, there is no day to day explanation tendered by the applicants, yet in view of the ratio laid down in *Oriental Aroma Chemical Industries Limited (supra)*, in the typical scenario of working in the Government offices some delay is bound to cause especially when the Governmental agencies were in a slow pace and encumbered in the light of fact that there is an involvement of public cause or public money. It reveals from the application that the applicants had explained delay in paragraphs no.9 and 10 of the application as to how the delay has caused which can be said to be a "sufficient cause" in the light of the specific circumstances occurred at the relevant time.

12. The learned counsel for the respondent has placed reliance on a Full Bench judgment of the Gujarat High Court in the case of Municipal Corporation of Ahmedabad Vs. Voltas Limited and etc. (**AIR 1995 GUJARAT 29**). The relevant paragraphs 5(i) to (vi) and 5.2 and 5.3 which reads thus:

“5. Learned counsel for the applicants in these group of matters has taken us through a number of relevant decisions of various courts. Firstly, reliance has been placed upon a decision of the Supreme Court in the case of Collector, Land Acquisition, Anantnag Vs. Katiji, reported at AIR 1987 SC 1353. Learned counsel for the applicants, after discussing the said decision, laid particular emphasis on the six factors recited in para 3 of the said decision. These six factors are 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 the 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 legalise on technical grounds but because it is capable of removing injustice and is expected to do so."

5.2. In the context of the submissions made by the learned counsel for the applicants, we are bound to observe that these six factors have been enumerated in the said decision of the Supreme Court for a limited and specific purpose. These factors have not been enumerated, in our opinion, with a view to furnishing any particular guidelines as to how an application for condonation of delay should be decided on merits. When these factors are considered in the context of the observations made in para 3 of the said decision, the reason for enumerating these factors becomes amply clear. In fact, the sentence which enumerates these six factors begins with "And such a liberal approach is adopted on principle as it is realised that;". Thus, in our opinion, that the Supreme Court has stated on principle or laid down by way of the ratio is not that these six factors are required to be individually considered and evaluated in the context of the facts of a particular application for condonation of delay. The only principle laid down in the said decision is that, on account of these factors, a liberal approach is required to be adopted by a Court in deciding an application for condonation of delay. This decision does not, in our opinion, in any manner deal with what facts should or should not constitute "sufficient cause" on the facts of case. Obviously, the sufficiency of the cause for condonation of delay must necessarily depend upon the facts of each case.

5.3. We must not lose focus on the relevancy of these six factors. Having perused this decision carefully, we are unable to locate therefrom any principle laid down to the effect that these six factors (whether considered individually, collectively or in combination with other facts) when factually established in a given case for condonation of delay, would by itself constitute "sufficient cause" for condonation. Thus, the Court when examining the facts that supposedly constitute "sufficient cause" for condonation, is not required to focus its attention on any of these six factors, but is only required to keep in mind that it is on the basis of these factors that a liberal view should be taken, so far as the interpretation of the facts is concerned. This is so because the only relevancy of these six factors which we can ascertain from the said decision is that the existence of these factors in the abstract, which fall within the realm of realities of life, (and not on the facts of a given case), constitute the basis upon which the decision lays down the ratio viz. that the Court should normally take a liberal view when appreciating those facts, which supposedly constitute "sufficient cause" for condonation of delay".

13. The sum and substance of the ratio can be carved out to the effect that a liberal approach is required to be adopted by the Court in deciding the applications for condonation of delay. Sufficiency of cause for condonation of delay would depend upon the facts of each case. In case of State of U.P. Vs. Phota and etc. (**AIR 1991 Allahabad 29**), a Division Bench of the Allahabad High Court refused to condone the delay of 282 days as no plausible explanation was tendered by the State of U.P. and they were found to be

negligent and guilty of inaction at every stage. Thus, the ratio cannot be applied to the case at hand.

14. In view of the aforesaid discussion, there is no material to show that there was inaction or negligence on the part of the Government Officials. Thus, no pedantic approach can be made while entertaining an applications for condonation of delay, which cannot be said to be deliberate or on account of malafide. The applicants cannot be said to derive some benefits from resorting to delay. No doubt, the delay is inordinate and, therefore, some cost needs to be imposed upon the applicants in order to adequately compensate the respondent.

15. In view of the aforesaid discussion, I am of the view that the delay needs to be condoned. The delay for 247 days stands condoned, subject to costs of Rs.7000/- to be paid to the respondent, within a period of two weeks. After depositing the costs, the appeal shall be registered.

16. Application stands disposed of in terms of the above observations.

PRITHVIRAJ K.CHAVAN, J.

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