

IN THE HIGH COURT OF BOMBAY AT GOA**Criminal Misc. Application No.110/2017**

Joseph Graciano Felizardo Barreto @ Joseph Barreto s/o
Antonio I.F.Barreto ... **Applicant**

Versus

Madhavrao Shivajirao Dessai @ Bala Desai
and others. .. **Respondents**

Shri Ryan Menezes, Advocate for the applicant.
Ms.Shradha Bhobe, Advocate for the respondents no.1 to 3.

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CORAM : PRITHVIRAJ K.CHAVAN, J.
ORDER RESERVEDE ON : 9/8/2017
ORDER PRONOUNCED ON :10/8/2017.

ORDER:

1. The applicant has prayed for condonation of delay of 22 days, which has occurred in preferring an appeal, against the impugned judgment of acquittal dated 30.10.2015 passed by the learned JMFC, mainly on the ground that there was an error while calculating the period of limitation.

2. In short, it is the contention of the learned counsel appearing for the applicant that it is because of his own mistake, for which, he has filed an affidavit, wherein he states that instead of counting the period of limitation as under Section 378 (5) Cr.P.C., which provides 60 days from the date of order, he calculated 90 days, as per the Limitation Act. He, therefore, prayed for condoning the said

delay, which according to him, would not cause any prejudice to the respondents.

3. The learned counsel appearing for the respondents has strongly objected the application by stating that it was due to sheer negligence and inaction on the part of the applicant, who is trying to push the blame for the delay on the unnamed Advocate and thereby mislead this Hon'ble Court. The explanation offered by the applicant is frivolous and the approach of the applicant is casual. The respondents also submit that all the Advocates are aware about the period of limitation of 60 days for filing Special Leave to Appeal and, therefore, it would not lie in the mouth of the counsel to bank upon so-called error. The respondents have also contended that a valuable right has been accrued to them on account of inaction and negligence attributed to the applicant and, therefore, the application needs to be dismissed.

4. Heard the learned counsel for the applicant and the respondents.

5. At the outset, it is apparent from the application that

after passing of the order dated 30.10.2015 the applicant had applied for a certified copy on 4.11.2015 and collected the same on 30.11.2015. At least, one thing is certain that he has not delayed in applying for the certified copy of the impugned order. Though valuable rights have been accrued in favour of the respondents, nevertheless, it is very essential to see as to whether sufficient cause has been shown by the applicant and the delay caused in filing the application for condonation is bonafide. The learned counsel appearing for the applicant has, therefore, placed a useful reliance on the authority reported in **2013 DGLS (SC) 743** (Esha Bhattacharjee Vs. Managing Committee of Raghunathpur Nafar Academy and others), wherein the Hon'ble Supreme Court, while dealing with the application for condonation of delay, carved out a few principles in paragraph 15. Paragraph 15 which reads thus:-

“15. From the aforesaid authorities, the principles that can be 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.

6. In view of the ratio laid down by the Hon'ble Supreme Court, the delay needs to be condoned as it is not inordinate and that it is always better to decide the matter on merits. The personal affidavit of the learned counsel can be said to be just and proper as he failed in properly calculating the period of limitation. Substantial justice, as stated by the Supreme Court, being paramount and pivotal the technical considerations should not be given undue and uncalled for emphasis. As such, the delay will have to be condoned. But, however, the respondents will have to

be adequately compensated, and therefore, the application is granted, subject to payment of costs of Rs. 2000/- (Rs.Two thousand only) to the respondents. After payment of costs, the office is directed to register the appeal.

7. In view of the above discussion, the application stands disposed of accordingly.

PRITHVIRAJ K.CHAVAN, J.

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