

IN THE HIGH COURT OF BOMBAY AT GOA

MISC.CIVIL APPLICATION NO. 846 OF 2016
IN
STAMP NUMBER MAIN NO. 3130 OF 2016

DIRECTORATE OF SPORTS AND YOUTH
AFFAIRS, PANAJI.,

... Applicant

Versus

ANAND SALGAOCAR.,

... Respondent

Ms. Prachi Sawant, Addl. Government Advocate for the Applicant.

Mr. U. Pai Raikar, Advocate for the Respondent.

Coram :- **F. M. REIS, J**

Date : **24th March, 2017**

P.C.

Heard Ms. Sawant, learned Addl. Government Advocate appearing for the Applicant and Mr. Raikar, learned Counsel appearing for the Respondent.

2. This is an application for condonation of delay in filing an Appeal challenging the Award passed by the Reference Court, whereby the compensation has been enhanced to a sum of Rs.1,024/- per square metre for an area of 19,483.

3. Learned Counsel appearing for the Respondent has filed their reply and strongly opposed the application for condonation of delay. Learned Counsel further pointed out that it has been a casual approach on the part of the Applicants to assume that the Courts will condone the delay without any plausible material produced to show the grounds on which delay deserves to be condoned. Learned Counsel further pointed out that the vagueness in the application itself would show

that the allegations made therein are erroneous and, in any event, not a sufficient cause for condoning the delay under Section 5 of the Limitation Act. Learned Counsel further submits that though it is contended that the delay had occurred as the Government Pleader was sick and there was a bereavement in family, the names and its particulars have not been disclosed. Learned Counsel has taken me through the evidence and pointed out that the unexplained delay reflected in the said application would itself show that the Applicants are not entitled for any discretion to condone the delay.

4. The learned Addl. Government Advocate appearing for the Applicants however submits that on account of administrative reasons and as the file had to move from different Department for requisite sanction to prefer the Appeal, there was a delay in filing such Appeal. Learned Counsel further pointed out that the reference in the reply to the Government Advocate is of the Government Pleader who appeared for the Applicants before the Reference Court. Learned Addl. Government Advocate has taken me through the affidavit and 5. I have duly considered the submissions of the learned Counsel and examined the rival contentions of the respective Counsel. It is to be remembered that after the period of limitation prescribed rights to the other side which cannot be easily defeated on the basis of some vague allegations. In the present case, Mr. Raikar, learned Counsel appearing for the Respondent, was otherwise justified to show that there are many gaps which have not been satisfactorily explained by the Applicant. But, it cannot be lost sight of the fact, that in case the delay is not condoned, the amount payable would be at the cost of the public exchequer and, as such, the Courts are expected to take a justice oriented approach in such cases. As rightly pointed out

by Mr. Raikar, learned Counsel, that the Apex Court had in fact taken note of the lethargy on the part of the Government Department in approaching the Court belatedly, wherein the Apex Court has observed in the case reported in (2012)3 SCC 563 in the case of Postmaster General & Ors. vs. Living Media India Limited & anr. at Paras 12, 13, 14, 15 and 29 thus :

"12. In Collector (LA) v. Katiji while considering "sufficient cause" in the light of Section 5 of the Limitation Act, 1963, this Court pointed out various principles for adopting liberal approach in condoning the delay in matters instituted in this Court.

13. The learned Additional Solicitor General heavily relied on the following principles: (*Katiji case*, SCC p. 108, para 3)

"(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 legalise injustice on technical grounds but because it is capable of removing injustice and is expected to do so.”

By showing the above principles, the learned ASG submitted that there is no warrant for according step motherly treatment when the “State” is the applicant. It is relevant to mention that in that case, the delay was only of four days.

14. In *G. Ramegowda v. Land Acquisition Officer* the principles enunciated in paras 15 and 17 are heavily relied on by the learned ASG. They are: (SCC p. 148)

“15. In litigations to which Government is a party there is yet another aspect which, perhaps, cannot be ignored. If appeals brought by Government are lost for such defaults, no person is individually affected; but what, in the ultimate analysis, suffers is public interest. The decisions of Government are collective and institutional decisions and do not share the characteristics of decisions of private individuals.

* * *

17. Therefore, in assessing what, in a particular case, constitutes ‘sufficient cause’ for purposes of Section 5, it might, perhaps, be somewhat unrealistic to exclude from the considerations that go into the judicial verdict, these factors which are peculiar to and characteristic of the functioning of the Government. Governmental decisions are proverbially slow encumbered, as they are, by a considerable degree of procedural red tape in the process of their making.”

Considering the peculiar facts, namely, the change of Government Pleader who had taken away the certified copy after he ceases to be in office, the High Court condoned the delay which was affirmed by this Court.

15. In *State of Haryana v. Chandra Mani* while condoning the delay of 109 days in filing the LPA before the High Court, this Court has observed that certain amount of latitude within reasonable limits is permissible having regard to impersonal bureaucratic set-up involving red-tapism. In the same decision, this Court directed the State to constitute legal cells to examine whether any legal principles are involved for decision by the courts or whether cases required adjustment at governmental level.

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29. In our view, it is the right time to inform all the government bodies, their agencies and instrumentalities that unless they have reasonable and acceptable explanation for the delay and there was bona fide effort, there is no need to accept the usual explanation that the file was kept pending for several months/years due to considerable degree of procedural red tape in the process. The government departments are under a special obligation to ensure that they perform their duties with diligence and commitment. Condonation of delay is an exception and should not be used as an anticipated benefit for the government departments. The law shelters everyone under the same light and should not be swirled for the benefit of a few.

5. Taking note of the said observations of the Apex Court and the delay as explained in the affidavits filed by the Applicant, no doubt, the concerned Departments are expected to ensure that the Appeals are preferred within the time prescribed.

6. In such circumstances, I find that the Applicants are expected to take note of the said observations of the Apex Court and ensure that they are circulated to all the concerned Departments to ensure that in future that the Department shall diligently pursue their remedy to prefer the Appeal. In the present case, considering that the delay is of 89 days and in the peculiar facts and circumstances of the case

as pointed out, that there was a bereavement in the family of the Government Pleader and further administrative delay, I find that the delay of 89 days be condoned subject to payment of costs to the Respondent, which are quantified at Rs.5,000/- as condition precedent.

7. Application stands disposed of accordingly.

F .M. REIS, J.

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