

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL WRIT PETITION NO. 1933 OF 2017

Anand Prabhakar Joshi

...Petitioner

Versus

Bank of Maharashtra

...Respondent

...

Mr.Anand Joshi Petitioner in person.

Mr.D.J.Bhanage a/w Mr.Mayur D.Joglekar for the Respondent.

....

CORAM : R.G.KETKAR, J.

DATE : 15th March 2017

P.C.

. Heard Mr.Anand Joshi, petitioner in person and Mr.Bhanage, learned counsel for the respondent at length.

2. By this Petition under Article 227 of the Constitution of India, the petitioner (hereinafter referred to as plaintiff) has challenged the Judgment and Order dated 8th December 2016 passed by the learned District Judge-18, Pune in Misc. Civil Appeal No. 729 of 2016.

3. By that order, the learned District Judge has allowed the application made by the respondent-original defendant and condoned the delay of 49 days in filing the substantive appeal against the judgment and decree dated 16th April 2016 passed by the learned Civil Judge, Senior Division, Pune in Special Civil Suit No. 40 of 2000.

4. In support of this petition, Mr. Joshi contended that the defendant came with the case that delay is caused on account of administrative and institutional limitations. There is no sufficient cause. For making out the sufficient cause, a factual foundation is essential and it cannot be decided on abstract principles. The defendant has not stated precise cause for not preferring the appeal within the period of limitation. The defendant has to show precisely alongwith office notes that how the delay had taken place and whether it was beyond its control. He submitted that perusal of the application shows that proof of sufficient caused is absent in the application. The onus of proof is on the defendant and the vague and general reasons of administrative delay do not fulfill the provisions of law. The Court has no power to condone the delay, unless and until the defendant comes with a sufficient cause. The Court cannot exercise its discretion to condone the delay. He submitted that the reasons given by the defendant are bogus. They have not produced office notes to substantiate reasons given in the application. He submitted that this case is pending for more than 22 years and the suit was decided in 2016. He submitted that the defendant did not submit any document nor examined any witnesses. He invited my attention to paragraph 3 of the application for condonation of delay filed by the defendant and submitted that the acts of the defendant are criminal acts. He also relied upon the following decisions:

*(1) Laxman N.Divekar V/s State of Maharashtra
(AIR 1998 Bom-176)*

*(2) Post Master General V/s Living Media India Ltd.
(AIR 2012 SC-1506)*

*(3) Esha Bhattacharjee V/s Managing Committee of
Raghunathpur Nafar Academy and Ors.
(2013 AIR SCW 6158)*

5. On the other hand, Mr.Bhanage supported the impugned order. He submitted that the suit instituted by the plaintiff was partly decreed by the Trial Court. Aggrieved by the decision, the plaintiff has instituted appeal on 6th June 2016. The defendant has preferred appeal on 18th July 2016. As there was delay of 49 days in preferring the said appeal, the defendant took out an application for condonation of delay. He submitted that after considering the material on record, the learned District Judge has condoned the delay of 49 days. He, therefore, submitted that no case is made out for invocation of powers under Article 227 of the Constitution of India.

6. I have considered the submissions advanced by the parties. I have also perused the material on record. As noted earlier the plaintiff's suit was partly decreed. Operative part of the order dated 16th April 2016 reads thus:

- “1. *The suit is partly decreed.*
2. *It is hereby declared that order dated 01/10/1996 issued by defendant against plaintiff in respect of charge sheet dated 24/01/1992 is illegal and void ab initio, having no legal consequences.*
3. *Rest of the suit for seeking relief of declaration against order dated October 1/96 in respect of charge sheet dated 14/09/2015 including plaintiff's entitlement to claim compensation, deemed to be in service and other service benefits is hereby dismissed.*
4. *It is declared that plaintiff is entitled to receive an amount of Rs. 3,00,000/- from defendant as compensation @ 6% p.a. with simple interest from the date of institution of suit till final realisation of amount.*
5. *Defendant bank do pay the above amount to plaintiff within three months from the date of order.*
6. *If the defendant failed to pay the decretal amount, then plaintiff is at liberty to recover the same through execution proceeding.*
7. *Defendant to pay the cost of proceeding to plaintiff and bear its own cost.*
8. *Decree be drawn up accordingly”.*

7. A perusal of clause 3 of the operative part of the order dated 16th April 2016 shows that the learned trial Judge has rejected the prayer made by the plaintiff for seeking relief of declaration against the order dated 1st October 1996 in respect of charge sheet dated 14th September 1995 including plaintiff's entitlement to claim

compensation, deemed to be in service and other service benefits. It is common ground between the parties. Aggrieved by this part, plaintiff has filed appeal on 6th June 2016.

8. As far as clause nos. (2), (4) and (5) are concerned, the learned trial Judge has decided suit partly against the defendant. Aggrieved by this decision, the defendant has preferred appeal on 18th July 2016 and there is delay of 49 days in filing the appeal. By the impugned order, the learned District Judge has condoned the delay. In paragraph 3 of the application, the defendant has given reasons for condoning the delay. After considering the material on record, the learned District Judge has condoned the delay. In the case of *State of Nagaland vs Lipok Ao & Ors* [(2005) 3 SCC 752] while dealing with the condonation of delay, the Apex Court has observed that what counts is not the length of the delay but the sufficiency of the case and shortness of the delay is one of the circumstances to be taken into account in using the discretion. The expression “sufficient cause” should be considered with pragmatism in a justice oriented approach rather than the technical detection of sufficient cause for explaining every day's delay.

9. Apart from that as noted earlier, the plaintiff has filed appeal on 6th June 2016. The defendant can always file cross objection in terms of

Order XLI Rule 22 of C.P.C within one month from the service of the notice of the day fixed for hearing appeal. As noted earlier, in the present case, the defendant has also filed appeal on 18th July 2016. Even otherwise, instead of preferring an appeal, the defendant could have filed cross objection challenging the decree passed against them as per Order XLI Rule 22 of C.P.C. In view thereof, I do not find that the learned District Judge has committed any error in condoning the delay.

10. Mr.Joshi has relied upon the decision of this Court in ***Laxman Divekar*** case. In that case, delay was of 675 days. He also relied upon the decision of Apex Court in ***Post Master General***, wherein delay was of 427 days. As far as the decision in ***Esha Bhattacharjee V/s.Managing Committee of Raghunathpur Nafar Academy and Others*** is concerned, there was delay of 2449 days. In view thereof, the said decisions are not applicable. It cannot be said that discretion exercised by the learned District Judge is arbitrary, capricious or perverse. No case is made out for invocation of power under Article 227 of the Constitution of India. Hence, petition fails and the same is dismissed.

(R.G.KETKAR, J.)