

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRI. WRIT PETITION NO. 1552 OF 2015

Bombay Knitting Pvt. Ltd., & Ors. ... Petitioners.

V/s.

State of Maharashtra & Anr. ... Respondents.

Mr. M.G. Shukla, Advocate for the Petitioners.

Mr. V. V. Gangurde, APP for the State.

Mr. Abhishek Tripathi, Advocate for Respondent No. 2.

CORAM : RAVINDRA V.GHUGE,J.

DATE : 21 MARCH, 2017

P.C. :

1 The Petitioners are aggrieved by the order dated 20.01.2015 passed by the special Judge under NDPS Act, Greater Mumbai by which the delay of 151 days caused in filing the revision for challenging the order dated 10.09.2013 has not been condoned and Misc. Application No. 1495 of 2014 filed by the Petitioners has been rejected.

2 I have considered the submissions of the learned Advocate for the Petitioners and the Respondents.

3 There is no dispute that by virtue of Article 131 of the Limitation Act, a period of 90 days is prescribed for preferring a criminal revision application under section 397

of the Cr. P.C.. It is equally undisputed that the delay of 151 days has been caused. The learned revisional court has declined to condone the delay on the ground that the same is unexplained.

4 It is the trite law that the matters pertaining to the condonation of the delay are to be dealt with liberally rather than taking a pedantic view. It is expected that while dealing with such matters, the court should adopt a pragmatic approach. It is equally settled principle that where laches are attributed to the conduct of the applicant and where there is a possibility that the applicant would be taking undue advantage of the delay caused, the delay ought not to be condoned. In the instant case, I do not find that the revisional court has arrived at a conclusion that laches are attributable to the conduct of the petitioners. It also cannot be ignored that if the remedy of revision is not available to the petitioner, he would not be in a position to challenge the order dated 10.09.2013 passed by the learned Metropolitan Magistrate.

5 The Hon'ble Apex Court in the matter of **Collector, Land Acquisition, Anantnag & Ors. vs. Mst. Katiji & Ors.** - AIR 1987 SC 1353, has observed below paragraph no.3 as under :

“3. The legislature has conferred the power to condone delay by enacting Section 5 (Any appeal or any application, other than an application under any of the provisions of Order [XXI](#) of the CPC, 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) 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 meaningful 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 :-

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 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 step-motherly 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-grate 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.”

6 In the matter of **Esha Bhattacharjee vs. Managing Committee of Raghunathpur Nafar Academy & Ors.** - (2013) 12 Supreme Court Cases 649. The Hon'ble Apex Court has set forth certain principles for condonation of delay which read as under :

“(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, behavior 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.

(xiv) An application for condonation of delay should be drafted with careful concern and not in a half hazard manner harboring the notion that the courts are required to condone delay on the bedrock of the principle that adjudication of a lis on merits is seminal to justice dispensation system.

(xv) An application for condonation of delay should not be dealt with in a routine manner on the base of individual philosophy which is basically subjective.

(xvi) Though no precise formula can be laid down regard being had to the concept of judicial discretion, yet a conscious effort for achieving consistency and collegiality of the adjudicatory system should be made as that is the ultimate institutional motto.

(xvii) The increasing tendency to perceive delay as a non-serious matter and, hence, lackadaisical propensity can be exhibited in a non-challant manner requires to be curbed, of course, within legal parameters.”

7 Considering the above, I find that the delay of 151 days can neither be termed as being deliberate nor inordinate. The comparative hardship being suffered by respondent no.2 would be reduced by imposing costs on the petitioners.

8 In the light of the above, this petition is allowed. The impugned order dated 20.01.2015 is quashed and set aside and the Misc. application no. 1495 of 2014 is allowed.

9 Delay of 151 days is condoned by directing the petitioners to deposit costs of Rs.15,000/- before the revisional

court within a period of four weeks from today. The said cost be deposited on or before 24.04.2017. Respondent No.1 would be at liberty to withdraw the said costs without conditions.

10 The Revisional Court shall register the criminal application filed by the petitioners on 12.05.2014. Consequently, the litigating sides shall appear before the revisional court on 9th June, 2017 and formal notices need not be issued by the court.

11 Needless to state that if the direction to pay costs is not complied with, this order shall stand recalled and the impugned order dated 20.01.2015 shall then stand restored.

(RAVINDRA V.GHUGE,J.)

.....