

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL APPLICATION NO. 1271 OF 2000
AND
CIVIL APPLICATION NO. 1272 OF 2000
IN
FIRST APPEAL (ST) NO. 32268 OF 1997

The State of Maharashtra .. Applicant/Appellant
vs.
Jasodabai T. Mate and ors. .. Respondents

Mr. Y.Y. Dabke, Asst. Govt. Pleader for the Applicant/Appellant-State.
Mr. Akshay Chikhale i/b Mr. P.B. Shah for the Respondents.

CORAM : M. S. SONAK, J.
DATE : 13 FEBRUARY 2017.

P.C. :-

1] Heard Mr. Yogesh Dabke, learned Asst. Government Pleader (AGP) for the applicant-State. Mr. Akshay Chikhale, learned counsel for the respondents.

2] By Civil Application No. 1271 of 2000, the State applies for condonation of delay of 589 days in preferring this appeal against the impugned award dated 11 September 1995 made in Land Acquisition Reference No. 826 of 1990.

3] Although, the appeal accompanied by the civil application seeking condonation of delay was instituted on or about 17 November 1997, for several reasons, which shall be borne from the Roznama, the civil application seeking condonation of delay could not be taken up for consideration. The primary reasons for this delay is the lack of diligence in taking steps to serve the respondents.

4] Mr. Dabke, the learned AGP for the State, submits that there is delay in applying for the certified copy of the impugned award on account of heavy work load in the office of the District Government Pleader, which was handling the matter before the Reference Court. He submits that thereafter, some correspondence ensued between the office of District Government Pleader and the State Government on the proposal of institution of appeal. He submitted that some time was spent for drafting, typing and obtaining adequate copies of the memo of the appeal. He submits that the State Government is an impersonal agency which has to rely on its officers and there is no *mala fide* in instituting the appeal beyond the prescribed period of limitation. All this, according to him, constitutes sufficient cause for condonation of delay.

5] If the civil application seeking condonation of delay is perused, then, a list of dates and events is furnished in a routine manner indicating the movement of files. Thereafter, in paragraph '3', the following averments has been made, as the justification for instituting the appeal beyond prescribed period of limitation:

“3. The procedure prescribed for filing of First Appeal in this Hon’ble High Court by the State Government required scrutiny of the proposal for filing First Appeal at various stages. Initially, the Law Officer who appeared in the Trial Court and conducted the case, gave his opinion in favour of filing First Appeal in the High Court and he submitted the papers to the State Government in Law and Judiciary Department. Thereafter, the Law and Judiciary Department scrutinized the proposal and ultimately accorded sanction in filing First Appeal in this Hon’ble Court. After sanction, the papers were received in the office of the Government pleader; the work of drafting entrusted to one of the Law Officers who in turn after due scrutiny drafted the memo of appeal. After

getting adequate number of copies typed of the Judgment passed by the Reference Court and adequate copies of the Memo of First Appeal, the office of the Government Pleader filed the said First Appeal in this Hon'ble Court."

6] The averments in the application seeking condonation, are quite casual and unverifiable. On basis of such routine averments, the State, cannot, in every case, plead that delay should be condoned, because it is an impersonal agency, which is required to act through its officers. The statements like there was heavy pressure of work or that some time is always required for taking decision in such matters are too vague to merit any acceptance, particularly when we are dealing with cases of landlosers, who have been deprived of compensation for several years.

7] In ***Pundlik Jalam Patil (Dead) By Lrs. vs. Executive Engineer, Jalgaon, Medium Project and anr.***¹, the Hon'ble Supreme Court has held that pursuing stale claims and multiplicity of proceedings in no manner subserves public interest. These public interest parameters ought to be kept in mind by the courts while exercising the discretion dealing with the application filed under section 5 of the Limitation Act. Dragging the landlosers to courts of law years after the termination of legal proceedings would not serve any public interest. Settled rights cannot be lightly interfered with by condoning inordinate delay without there being any proper explanation of such delay on the ground of involvement of public revenue. This serves no public interest. Though, the State on its instrumentalities are the applicants seeking condonation of delay, they may be entitled to certain amount of latitude but the law of

1 (2008) 17 SCC 448

limitation is same for citizen and for governmental authorities. It would be a different matter where the Government makes out a case where public interest was shown to have suffered owing to acts of fraud or collusion on the part of its officers or agents and where the officers were clearly at cross purposes with it. In a given case, if any, such facts are pleaded and proved they cannot be excluded from consideration. In a case with which we are concerned, no such facts have been either pleaded or proved.

8] In *Registrar of Companies vs. Rajshree Sugar & Chemicals Ltd. and ors.*², the Hon'ble Supreme Court has held that though some latitude has to be shown to the Government in deciding the question of delay, that does not give a licence to the officers of the Government to shirk their responsibility to act with reasonable expedition.

9] In *Esha Bhattacharjee vs. Managing Committee of Raghunathpur Nafar Academy & Ors.*³, the Hon'ble Supreme Court has *inter alia* laid down the following guidelines for considering an application for condonation of delay:

“(i) ...
...
...

(xiv) *An application for condonation of delay should be drafted with careful concern and not in a haphazard manner harbouring 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.*

2(2000) 6 SCC 133

3(2013) 12 SCC 649

(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)

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

10] In ***Postmaster General and Ors. vs. Living Media India Limited and anr.***⁴, the Hon’ble Supreme Court declined to condone the delay of 427 days in filing the special leave petition by observing thus:

“12. *Though we are conscious of the fact that in a matter of condonation of delay when there was no gross negligence or deliberate inaction or lack of bonafide, a liberal concession has to be adopted to advance substantial justice, we are of the view that in the facts and circumstances, the Department cannot take advantage of various earlier decisions. The claim on account of impersonal machinery and inherited bureaucratic methodology of making several notes cannot be accepted in view of the modern technologies being used and available. The law of limitation undoubtedly binds everybody including the Government.*

13. *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 bonafide 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 government departments. The law shelters everyone under the same light and should not be swirled for the benefit of a few. Considering the fact that there was no proper explanation offered by the Department for the delay except mentioning of various dates, according to us, the Department has miserably failed to give any*

4 (2012)3 SCC 563

acceptable and cogent reasons sufficient to condone such a huge delay.”

11] In ***Basawaraj and anr. vs. Special Land Acquisition Officer***⁵, the Hon'ble Supreme Court at paragraphs 9 and 15 has observed thus:

“9. Sufficient cause is the cause for which the defendant could not be blamed for his absence. The meaning of the word “sufficient” is “adequate” or “enough”, inasmuch as may be necessary to answer the purpose intended. Therefore, the word “sufficient” embraces no more than that which provides a platitude, which when the act done suffices to accomplish the purpose intended in the facts and circumstances existing in a case, duly examined from the viewpoint of a reasonable standard of a cautious man. In this context, “sufficient cause” means that the party should not have acted in a negligent manner or there was a want of bona fide on its part in view of the facts and circumstances of a case or it cannot be alleged that the party has “not acted diligently” or “remained inactive”. However, the facts and circumstances of each case must afford sufficient ground to enable the court concerned to exercise discretion for the reason that whenever the court exercises discretion, it has to be exercised judiciously. The applicant must satisfy the court that he was prevented by any “sufficient cause” from prosecuting his case, and unless a satisfactory explanation is furnished, the court should not allow the application for condonation of delay. The court has to examine whether the mistake is bona fide or was merely a device to cover an ulterior purpose. (See *Manindra Land and Building Corpn. Ltd. v. Bhutnath Banerjee*, *Mata Din v. A. Narayanan*, *Parimal v. Veena and Maniben Devraj Shah v. Municipal Corpn. of Brihan Mumbai.*)

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15. The law on the issue can be summarised to the effect that where a case has been presented in the court beyond limitation, the applicant has to explain the court as to what was the “sufficient cause” which means an adequate and enough reason

which prevented him to approach the court within limitation. In case a party is found to be negligent, or for want of bona fide on his part in the facts and circumstances of the case, or found to have not acted diligently or remained inactive, there cannot be a justified ground to condone the delay. No court could be justified in condoning such an inordinate delay by imposing any condition whatsoever. The application is to be decided only within the parameters laid down by this Court in regard to the condonation of delay. In case there was no sufficient cause to prevent a litigant to approach the court on time condoning the delay without any justification, putting any condition whatsoever, amounts to passing an order in violation of the statutory provisions and it tantamounts to showing utter disregard to the legislature”.

12] The Division Bench of this Court in ***State of Maharashtra and ors. vs. Vithu Kalya Govari and ors.***⁶ has observed that the State is not expected to be negligent or to take no action for years and let the matters become time barred on account of its negligence and inaction. The usual reason of “official hassle” or “approval at different levels” is hardly sufficient to justify condonation of delay of about two years. In law, advantage has accrued to the non-applicants claimants and the same cannot be withdrawn in a mechanical manner and that too without any sufficient cause being shown by the applicants. Despite, awards/judgments of the Courts, which have attained finality, the claimants are not permitted to receive compensation in respect of their lands, which came to be compulsorily acquired, is itself, sufficient prejudice to them. Therefore, before any delay can be condoned and the claimants subjected to further prolonged litigation, the onus to show sufficient cause lies upon the applicant- State.

6 2008(6) Mh.L.J. 239

13] In this case, the Division Bench of this Court commented upon routine excuses stated in applications seeking condonation of delay in instituting the appeals, particularly, in land acquisition matters.

14] In the present case, the impugned award was made on 11 September 1995. As noted earlier, there is delay of about 589 days in instituting the appeal. The reasons stated are routine/official hassle and the time required to seek approval at different levels. This is not sufficient cause to condone the delay. Even the conduct of the State in not taking steps to effect service upon the landlosers or their legal representatives, though not strictly speaking relevant to consider the application for condonation of delay, cannot be easily pardoned. The State invariably, obtains ad-interim reliefs, thereafter does not take steps to serve the respondents. In this case, the appeal was instituted in the year 1997, but on account of negligence in taking steps to effect service upon the respondents, even the application seeking condonation of delay could not be disposed of till date. In the meanwhile, the landlosers were deprived of compensation awarded in their favour by the Reference Court

15] Upon cumulative consideration of the aforesaid, there is no case made out for condonation of delay of 589 days in instituting the appeal. Accordingly, Civil Application No. 1271 of 2000 seeking condonation of delay is dismissed. As a consequence, First Appeal (St.) No. 32268 of 1997 is also dismissed. Civil Application No. 1272 of 2000 does not survive and the same is also dismissed.

(M. S. SONAK, J.)