

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO. 5011 OF 2001
IN
FIRST APPEAL (STAMP) NO. 41195 OF 2000
WITH
CIVIL APPLICATION NO. 5012 OF 2001
IN
FIRST APPEAL (STAMP) NO. 41195 OF 2000
WITH
CIVIL APPLICATION (STAMP) NO. 7944 OF 2012
IN
FIRST APPEAL (STAMP) NO. 41195 OF 2000

The State of Maharashtra .. Applicant /Appellant
vs.
Rajaram Mahadeo Jakhale
& Ors. .. Respondents

Mr. A. A. Palkar – AGP for Applicant / Appellant.

CORAM : M. S. SONAK, J.
DATE: 10 JANUARY 2017

P.C :

1] By civil application no. 5011 of 2001, the applicant seeks condonation of delay of 3 years and 361 days in instituting the appeal to challenge award dated 18 September 1996 made by the 5th Additional District Judge, Kolhapur (Reference Court).

2] In the application seeking condonation of delay, a chronology of dates has been set out and thereafter, in paragraph 2 it is stated that because decisions are required to be taken at several levels, there was delay. This is hardly a satisfactory manner of explaining

inordinate delay of 3 years and 361 days.

3] In this case, the impugned award was made on 18 September 1996. Certified copy was obtained on 14 October 1996. After unexplained delay of over 4 months, the SLAO, Kolhapur informed the South Central Railways about requirement of depositing the enhanced compensation awarded by the Reference Court, since, in this case the acquisition was on behalf of the Railways. From 3 February 1997 till 8 August 1997 there is reference to some correspondence exchanged between the officials of the State and the Railways. By 8 August 1997, it appears that there were clearances for filing of the appeal. However, the appeal was filed only on 13 December 2000.

4] In between, the Law Officer of the Railways gave an opinion that since the acquisition was for the benefit of the Railways, even the Railway can institute an appeal, although, they were not parties before the Reference Court. Thereafter, once again, there was correspondence between the parties. This correspondence is really neither here nor there. Since, there is already sanction by State to institute the appeal, State Government could have easily instituted the same. If the Railways wanted to institute the appeal, it was open for the Railways to institute the appeal. However, relying upon such correspondence, it cannot be said that the delay of 3

years and 361 days stands explained.

5] Merely giving dates of correspondence is not a satisfactory manner of explaining the delay. The routine explanation that government decisions take some time is also not an acceptable explanation particularly when it comes to condonation of delay of 3 years and 361 days.

6] In ***Union of India and ors. vs. Visveswaraya Iron and Steel Ltd.***¹, the Hon'ble Supreme Court declined to entertain the special leave petition filed almost one year after the receipt of copy of the judgment. The explanation that delay was on account of the file having moved through various departments was not accepted.

7] In ***Special Land Acquisition Officer (SIP) and anr. Vs. Jose Prazeres DE Piedade Pinto r/o. Old Market and ors.***², the learned Single Judge of this Court has held that delay cannot be condoned in a matter relating to land acquisition case, merely on the ground that the matter involved public monies. On such basis, the Government cannot seek condonation of delay as a matter of right. It is necessary for the Government to furnish necessary and satisfactory explanation for such delay. In case the delay has occurred on account of either willful acts on the part of the

1 1987 (supp) Supreme Court Cases 192

2 2006(4) Mh.L.J. 318

concerned officer/s or for any other reason, the same has to be stated and some material produced on record in support thereof. Mere statements regarding the movement of the file from one office to the other office, from one table to the other table cannot be construed as satisfactory explanation for the delay in filing the appeal.

8] In ***Registrar of Companies Vs. Rajshree Sugar & Chemicals Ltd. and ors.***³, 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 ***Basawaraj and anr. Vs. Special Land Acquisition Officer***⁴, 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

3 (2000) 6 SCC 133

4 (2013) 14 SCC 81

*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*.)*

.....

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".*

10] In ***Esha Bhattacharjee vs. Managing Committee of Raghunathpur Nafar Academy and ors.***⁵, the Hon'ble Supreme Court has *inter alia* laid down the following guidelines for considering an application for condonation of delay:

5 (2013) 12 SCC 649

“(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.*

(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.”*

11] In ***Postmaster General and ors vs. Living Media India***

Limited and anr.⁶, the Hon'ble Supreme Court declined to condone

the delay of 427 days in filing special leave petition by observing

thus:

“28. *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 bona fides, 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.*

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*

6 (2012) 3 SCC 563

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.

30. *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 acceptable and cogent reasons sufficient to condone such a huge delay. Accordingly, the appeals are liable to be dismissed on the ground of delay."*

12] Taking into consideration the facts and circumstances as also the law laid down in the aforesaid cases, there is no case made out for condonation of inordinate delay of 3 years and 361 days. Accordingly civil application 5011 of 2011 is dismissed. As a consequence, the appeal is also dismissed.

13] Since the appeal is dismissed, civil applications therein do not survive and are disposed of accordingly.

(M. S. SONAK, J.)