

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO. 1049 OF 2001
IN
FIRST APPEAL (STAMP) NO. 26867 OF 1997

The State of Maharashtra .. Applicant/Appellant
vs.

Shri Pandharinath S. Kasale (Kamle)
(deceased) (since deceased through
L.Rs.) Vijay P. Kasale (Kamle) & Ors. .. Respondents

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

CORAM : M. S. SONAK, J.
DATE: 16 JANUARY 2017

P.C :

1] Heard Mr. Palkar, learned AGP for the Applicant – State. This civil application seeks condonation of delay of 2 years and 124 days in instituting the appeal against the award made by the Reference Court on 28 February 1995.

2] In this case, the sole respondent had expired sometime in the year 2005. Only after about five years steps were taken to bring on record the legal representatives. However, since some cause was shown in this regard, the legal representatives were permitted to be brought on record.

3] Now, in this application for condonation of delay, it is stated that though the award was made on 28 February 1995, application

for its certified copy was made only on 29 March 1997. There is absolutely no explanation for such inordinate delay in even applying for certified copy of the award. Thereafter, the application is replete with usual averments that some delay is bound to occasion since, decisions have to be taken at different levels in Government offices. The application makes reference to correspondence even prior to making of the impugned award. As usual, some blame is sought to be placed upon certain clerks without furnish of any details. Learned AGP submits that for the fault on the part of the District Government Pleader in not applying for certified copy, the State Government should not be prejudiced.

4] The aforesaid submission cannot apply to all situations. In this case, enhanced compensation is in range of Rs.16,000/- or thereabouts. Land losers have been deprived of compensation since at least the year 1995. The explanation for the delay is far from satisfactory. Accordingly no case is made out for condonation of delay.

5] 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. Prompt and timely payment of compensation to the landlosers facilitating their

1 (2008) 17 SCC 448

rehabilitation/resettlement is equally an integral part of public policy. One should not forget the basic fact that what is acquired is not the land but the livelihood of the landlosers. 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 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.

6] In ***Union of India and ors. vs. Visveswaraya Iron and Steel***

Ltd.², 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.***³, 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 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.***⁴, the Hon'ble Supreme court has held

2 1987 (supp) Supreme Court Cases 192

3 2006(4) Mh.L.J. 318

4 (2000) 6 SCC 133

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**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*

5 (2013) 14 SCC 81

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.***⁶, 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.*

(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.***⁷, the Hon'ble Supreme Court declined to condone the delay of 427 days in filing special leave petition by observing

⁶ (2013) 12 SCC 649

⁷ (2012) 3 SCC 563

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 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] For the aforesaid reasons, the civil application is dismissed.

Consequently, the appeal itself is dismissed.

(M. S. SONAK, J.)