

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 8671 OF 2015

Shri Vishram Sakharam Tivarekar Petitioner
vs
1 The State of Maharashtra,
through Government Pleader Office,
2 The Director,
Maharashtra State Warehousing
Corporation, Pune
3 General Manager (QC and HRD)
Maharashtra State Warehousing
Corporation, Pune
4 Chairman and Executive Committee,
Maharashtra State Warehousing
Corporation, Pune Respondents

Mr. Hemant Ghadigaonkar for the petitioner.
Mrs. Rupali M. Shinde, AGP for respondent No.1.
Mr. A.V. Chatuphale, for respondent Nos. 2 to 4.

**CORAM: ANOOP V. MOHTA AND
RAVINDRA V. GHUGE, JJ.**

DATE : April 18, 2017

ORAL JUDGMENT (Per Ravindra V. Ghuge, J.):

1 Rule. Rule is made returnable forthwith and heard finally
by the consent of the parties.

2 The Petitioner is aggrieved by the order dated 16.07.2015 passed by Respondent No.4 vide which the Appeal filed by the Petitioner under Rule 100 of Maharashtra State Warehousing Corporation Staff Service Regulations is rejected.

3 There is no dispute that the delay caused in filing the Appeal under Rule 100 is 796 days.

4 The learned counsel for Respondent Nos. 2, 3 and 4 vehemently submit that the delay was rightly not condoned since the reasons cited by the Petitioner were not acceptable and were not convincing.

5 We find that the Petitioner had caused a delay of 796 days in preferring his Appeal. It was specifically contended that prior to the filing of the Appeal, he had suffered brain haemorrhage and as a consequence of which he was under extensive medication. He was not able to recognise or coordinate considering the ailments that he had suffered. Thereafter, after re-gaining his health, the Appeal was

preferred.

6 It is trite law that while that while dealing with the Applications for condonation of delay, the Court has to adopt a pragmatic approach rather than taking a pedantic view. It needs to be considered as to whether the refusal to condone the delay would render a litigant remedyless, provided the delay caused is neither intentional nor deliberate or inordinate. If laches are attributable to the conduct of the Applicant, the delay need not be condoned.

7 Rule 100 of the Maharashtra State Warehousing Corporation (Staff) Service Regulations reads as under:

“**100** *Time limit for preferring an Appeal.* - No appeal shall be entertained unless it is preferred within forty five days from the date of the order imposing penalty:

Provided that the appellate authority may entertain the appeal after the expiry of the said period, if it is satisfied that the appellant had sufficient cause for not submitting the appeal in time.”

8 It is evident that an Appeal can be preferred within 45 days from the date of the order imposing the penalty. The proviso to Rule 100 enables the Competent Appellate Authority to entertain the

Appeal even after the expiry of the limitation period if it is satisfied that the Appellant had a sufficient cause in failing to submit such an Appeal.

9 There is no dispute that laches have not been attributed to the conduct of the Petitioner. So also, we do not find that the delay caused could be termed as being inordinate or deliberate.

10 The Hon'ble Apex Court in paragraph 3 of its judgment delivered in *Collector, Land Acquisition, Anantnag, vs. Katiji*¹, has observed as under :

“3 The legislature has conferred the power to condone delay by enacting sec. 5 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 AIR 1987 SC 1353

(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 stepmotherly 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 Judgement 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 grata 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."

11 Considering the above, we find that the impugned order refusing to condone the delay is based purely on the assumption that the delay does not deserve to be condoned. Reasons for arriving at such conclusion in the impugned order have not been set out and as

such the impugned order appears to be cryptic in nature.

12 Considering the fact situation and the law as is settled, this Petition is partly allowed. The impugned order dated 16.07.2015 is quashed and set aside. Respondent No.4 is directed to register the Appeal filed by the Petitioner under Rule 100 keeping in view that his Application seeking condonation of delay stands allowed.

13 Considering that all litigating sides are before us, who consent to appear before Respondent No.4 on 9th June, 2017, Respondent No.4 need not issue notices to the parties. Since the Petitioner is a senior citizen, it is expected that Respondent No.4 would decide the Appeal as expeditiously as possible on its own merits and preferably within a period of four months from the date of appearance.

14 Rule is made partly absolute in the above terms. There shall be no order as to costs.

(RAVINDRA V. GHUGE J.)

(ANOOP V. MOHTA, J.)