

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR

CRIMINAL APPLICATION (APPA) NO.310 OF 2015

IN

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IN

CRIMINAL APPEAL NO..... OF 2015

M/s. Mehadia Sales Trade Corporation

..VS..

Maharashtra Power Transmission Structures Pvt. Ltd. And anr

.....
Office Notes, Office Memoranda of Coram,
appearances, Court orders or directions
and Registrar's orders
.....

Court's or Judge's Order

Shri Abhijeet Sambaray, Counsel for the applicant.
Shri K.D. Shukla, Counsel for the non-applicants.

CORAM : P.N. DESHMUKH, J.

DATED : APRIL 3, 2017.

This is an application for condonation of 149 days delay caused in filing application for grant of leave to appeal as required under Section 378(4) of the Code of Criminal Procedure.

Heard learned counsel for the applicant/ original complainant and learned counsel for the non-applicant/accused.

It appears that on dismissal of complaint by the Trial Court filed under Section 138 of the Negotiable Instruments Act, 1881 on 11.11.2014, applicant on the next day applied for certified copy, which was made available on 9.12.2014. It is the case of applicant that he then orally instructed his counsel on record to prefer

an appeal, however for some mis-understanding on both sides, no such appeal came to be preferred, as a result of which, applicant was constrained to collect documents from his counsel on record and, thereafter, engaged services of some other counsel and on finding that limitation for filing appeal has already expired, had moved this application for condonation of delay. Applicant in support of present application has also filed surrejoinder thereby bringing on record fact of applicant's (wrongly) preferring appeal before learned District and Sessions Court, Nagpur on 12.5.2015 of which appeal memo is annexed with surrejoinder, however has contended that on realizing that no such appeal would lie before the said forum, as it would lie before this Court, and since by then summer vacations as already commenced, could take necessary steps only after the vacation was over and thus had prayed that application be allowed by imposing suitable costs as applicant has a good case on merits.

Learned counsel for the non-applicants/accused opposed the application on the ground that except for mere contention about instructions given by applicant to his counsel to prefer appeal, no documents to substantiate said fact are placed on record. It is thus contended that no such instructions must have been given to file appeal and thus no documents establishing such communication

exist and as such has submitted that as applicant failed to take effective steps for a long period of more than one-and-half-year without justifying any reason, application is liable to be rejected.

Considering controversy involved in present application and in view of settled legal position that 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 and also that, "Every day's delay must be explained" does not meant that pedantic approach should be made. Why not every hour's delay, every second's delay? As per settled legal principles, the doctrine must be applied in a rational, common sense and pragmatic manner.

Similarly, it must be remembered that in every cases of delay there can be some lapse on the part of the litigant and that alone is not enough to turn down his plea and to shut the door against him, however at the same time, Court should not forget opposite party altogether. It must be borne in mind that he is a loser, and he too would have incurred quite a large litigation fees and thus while condoning delay caused due to the laches on the part of the applicant, the Court shall compensate the opposite party of his loss by imposing suitable costs. In the circumstances, application is

liable to be allowed by imposing suitable costs on applicant, as per the order below:

Criminal Application No.310 of 2015 is allowed thereby condoning 149 days delay caused in filing application for grant of leave to file appeal subject to applicant's making payment of costs of Rs.7,000/- to non-applicant within a period of two weeks from today.

On payment of costs, office to place the matter in the caption of admission.

JUDGE

!! BRW !!