

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

928. CIVIL APPLICATION NO. 7898 OF 2018
IN
SAST/6539/2018

NARSIMHA CONSTRUCTION PVT. LTD. THRO.
MANAGING DIRECTOR-MOHAN KASHINATHRAO KALE
VERSUS
MAHARASHTRA STATE ROAD TRANSPORT
CORPORATION THRO. M.D. AND ORS.

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Mr. J.N.Singh h/f Mr. H.A.Joshi,
Advocate for applicant.
Smt. R.D.Reddy, Advocate for R – 1 to 4.

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CORAM: VL.ACHLIYA, J.
DATE : 21/09/2018

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ORAL ORDER :

1. Leave to amend the prayer clause.
2. The applicant has moved this application for condonation of 323 days delay in filing appeal against the Judgment and Order passed by first appellate Court.
3. In brief it is the contention of learned counsel for the applicant that the Judgment was delivered by first appellate Court on 11/01/2017 after the case was reserved for Judgment. The appellants were unaware of the Judgment and Order passed in the matter. In the month of February, 2018 the applicant received notice in respect of application moved by the respondents for withdrawal of amount deposited by appellant in the District

Court. On receipt of notice, the applicant came to know about passing of Judgment and decree. Immediately thereafter the application for certified copy was filed. On receipt of certified copy, the appeal is presented. In the process, the delay of 323 days has been caused in filing appeal. It is submitted that delay was not deliberate but due to reason the appellants were unaware of the Judgment and Order passed in the matter.

4. Learned counsel for the appellants submits that appellants have very good case to succeed in the appeal. There was no reason for appellate Court to interfere and modify the decree passed by trial Court. Learned counsel further submits that if delay is not condoned, serious prejudice would cause to the applicant.

5. On the other hand, the respondents have opposed the application. It is submitted that the applicants – appellants have not assigned sufficient cause to condone the delay of 323 days caused in filing appeal and the reasons assigned are false and concocted.

6. On due consideration of the submissions advanced in the light of broad principles to be followed while dealing with application for condonation of delay as laid down by Apex Court in the case of *Isha Bhattacharjee V/s Managing Committee of Raghunathpur Nafar Academy and others reported in (2013) 12 SCC 649*, I am of the view the delay caused in filing appeal deserves to be condoned. There is no reason to disbelieve the contention of applicant that for want of knowledge about the

Judgment and Order passed in the matter, the appeal could not be filed within time. It is admitted position that the respondents had moved the application for withdrawal of amount deposited in the Court in view of decree being partly modified. On receipt of notice, the applicant came to know about the Judgment and Order passed in the matter and thereafter they have immediately taken steps to file appeal. In that view, the cause assigned deserves to be accepted as sufficient cause for condoning the delay.

7. As laid down in the case of Isha Bhattacharjee [supra], while dealing with the application seeking condonation of delay, the Court is expected to be liberal, pragmatic, justice oriented and the approach of the Court should not be hyper-technical. Substantial justice should be paramount consideration while dealing with such application. Applying the principles laid down in the case of Isha Bhattacharjee, I am of the view that delay caused in filing appeal deserves to be condoned as no prejudice would cause to the respondent if delay is condoned. On the contrary, if delay is not condoned, there is every likelihood that meritorious matter may be rejected for technical reason. Considering the prejudice caused to the respondents, the same can be compensated in terms of money. I am, therefore, inclined to pass the following order.

ORDER

The application is allowed in terms of prayer clause 'B' subject to cost of Rs. 10,000/- [Rupees Ten Thousand] to be deposited by the applicant/appellant in the Court within

two weeks from the date of this order. Failure to deposit the cost, order condoning the delay stands recalled and application stands dismissed. In case cost is deposited, the appeal be registered. On deposit of cost, the respondents will be at liberty to withdraw the same.

7. The application stands disposed of in above terms.

[V.L.ACHLIYA]
JUDGE

KNP/C.A. 7898.2018 in S.A.St. 6539.2018