

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

924 CIVIL APPLICATION NO.8425 OF 2018
IN SAST/7706/2018

SAYJABAI PUNDLIK PATIL THROUGH POA - MORESHWAR PUNDLIK
PATIL
VERSUS
SUBHASH JULAL PATIL

.....
Advocate for Applicant : Shri Nagori Girish
Advocate for Respondent : Shri Patil Bipinchandra K.
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CORAM: V.L. ACHLIYA, J.

DATE: 09.10.2018

ORDER :

1] The applicant has moved this application for condonation of 90 days delay in filing second appeal for the reasons set out in detail in the application.

2] Heard learned counsel for the applicant and the respondent.

3] In brief, it is the contention of the learned counsel for the applicant that the delay caused in filing the appeal was not intentional nor deliberate, but caused due to reasons beyond the control of the applicant. The learned counsel submits that the applicant is an old lady

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and suffering from various ailments. He further submits that the appellant being poor and illiterate woman and unaware of the procedural formalities to file appeal, the appeal could not be filed within time. He further submits that in case delay is not condoned, there is every likelihood that a serious prejudice may cause to the applicant. On the contrary, if delay is condoned, no prejudice would cause to the respondent as ultimately the appeal will be decided on its own merits.

4] On the other hand, the respondent has opposed the application by filing affidavit in reply. It is the contention of the learned counsel for the respondent that the reasons assigned for condonation of delay are false, concocted and by way of afterthought. The learned counsel submits that in the first appeal, the applicant was represented through Power of Attorney Holder. The first appeal itself was filed beyond the period of limitation prescribed to file an appeal. There was delay of 395 days in filing the first appeal.

5] On due consideration of the cause assigned for condonation of delay, the first appellate Court has rejected the application on reaching to conclusion that

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no sufficient cause has been shown to condone the delay. It is further submitted that throughout the applicant has acted negligently in prosecuting the matter. No documents are produced in support of the contention that due to the old age and ailment, the applicant could not file appeal within time. The learned counsel further submits that ignorance of law cannot be pleaded as an excuse to condone the delay. It is submitted that in absence of sufficient cause being shown to condone the delay, the application be rejected.

6] On due consideration of the submissions advanced in the light of overall facts of the case and the cause assigned to condone the delay, I am of the view that the delay deserves to be condoned. The fact is not in dispute that the applicant is an old aged woman. Considering the age of the applicant, it cannot be said that the reasons assigned to condone the delay are false and concocted. It is quite settled position in law that while condoning the delay, the Court should adopt a liberal, pragmatic and justice oriented and non-pedantic approach. The term "sufficient cause" mentioned in Section 5 of the Indian Limitation Act needs to be

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understood in proper spirit, philosophy and while interpreting the said term, the Court is expected to take into consideration the overall facts of the case and the said term be interpreted liberally. The Apex Court in the case of *Esha Bhattacharjee v. Managing Committee of Raghunathpur Nafar Academy & others* [(2013) 12 SCC 649], after taking survey of the precedents of law on the issue of condonation of delay laid down the broad principles to be followed by the Courts of law to deal with an application seeking condonation of delay. Following principles have been laid down by the Apex Court:-

- i) There should be a liberal, pragmatic, justice-oriented, non- pedantic approach while dealing with an application for condonation of delay, for the courts are not supposed to legalise injustice but are obliged to remove injustice.
- ii) The terms "sufficient cause" should be understood in their proper spirit, philosophy and purpose regard being had to the fact that these terms are basically elastic and are to be applied in proper perspective to the obtaining fact- situation.
- iii) Substantial justice being paramount and pivotal the technical considerations should not be given undue and uncalled for emphasis.
- iv) No presumption can be attached to deliberate causation of delay but, gross negligence on the part of the counsel or litigant is to be taken note of.

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v) Lack of *bona fides* imputable to a party seeking condonation of delay is a significant and relevant fact.

vi) It is to be kept in mind that adherence to strict proof should not affect public justice and cause public mischief because the courts are required to be vigilant so that in the ultimate eventuate there is no real failure of justice.

vii) The concept of liberal approach has to encapsule the conception of reasonableness and it cannot be allowed a totally unfettered free play.

viii) There is a distinction between inordinate delay and a delay of short duration or few days, for to the former doctrine of prejudice is attracted whereas to the latter it may not be attracted. That apart, the first one warrants strict approach whereas the second calls for a liberal delineation.

ix) The conduct, behaviour and attitude of a party relating to its inaction or negligence are relevant factors to be taken into consideration. It is so as the fundamental principle is that the courts are required to weigh the scale of balance of justice in respect of both parties and the said principle cannot be given a total go by in the name of liberal approach.

x) If the explanation offered is concocted or the grounds urged in the application are fanciful, the courts should be vigilant not to expose the other side unnecessarily to face such a litigation.

xi) It is to be borne in mind that no one gets away with fraud, misrepresentation or interpolation by taking recourse to the technicalities of law of limitation.

xii) The entire gamut of facts are to be carefully scrutinized and the approach should be based on the paradigm of judicial discretion

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which is founded on objective reasoning and not on individual perception.

xiii) The State or a public body or an entity representing a collective cause should be given some acceptable latitude.

16. To the aforesaid principles we may add some more guidelines taking note of the present day scenario. They are: -

a) An application for condonation of delay should be drafted with careful concern and not in a half hazard 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.

b) 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.

c) Though no precise formula can be laid down regard being had to the concept of judicial discretion, yet a conscious effort for achieving consistency and collegiality of the adjudicatory system should be made as that is the ultimate institutional motto.

d) The increasing tendency to perceive delay as a non-serious matter and, hence, lackadaisical propensity can be exhibited in a non-challant manner requires to be curbed, of course, within legal parameters."

7] Thus, keeping in view the overall facts of the case and the cause assigned for condoning the delay and consequences to follow if delay is not condoned, I am of

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the view that the delay deserves to be condoned. If delay is condoned, no serious prejudice would cause to the respondent as the appeal will be decided on its own merits. On the other hand, if delay is not condoned, a possibility cannot be ruled out that the applicant may suffer serious prejudice and meritorious matter may be dismissed due to technical reason. I am, therefore, inclined to allow the application subject to costs of Rs.5,000/- to be payable by the applicant to the respondent as a condition precedent to condone the delay.

8] In the result, the application is allowed in terms of prayer clause [B] subject to payment of costs of Rs.5,000/- by the applicant to the respondent within a period of four weeks. On payment of costs, the appeal be registered. Civil application is disposed of in above terms.

(V.L. ACHLIYA, J.)