

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

CIVIL APPLICATION NO. 7178 OF 2018

IN

CIVIL REVISION APPLICATION [stamp] NO.15561 OF 2018

Maharashtra State Seeds Corporation Ltd. .. Applicant

versus

Nirmal Seeds Pvt. Limited and others .. Respondents

Mrs Anjali (Bajpai) Dube, Advocate for applicant
Mr V. Y. Bhide, Advocate for respondent no. 1

CORAM : SUNIL P. DESHMUKH, J.

DATE : 12th October, 2018

ORDER :

1. Heard learned counsel for appearing parties.
2. Civil application seeks condonation of delay in filing civil revision application in respect of an order dated 12-07-2017 passed by district judge-6, Jalgaon on application Exhibit - 16 filed by present applicant and others who are defendants in regular civil suit bearing no. 2 of 2017 pending before the district court, Jalgaon.

3. Exhibit -16 was moved for rejection / dismissal of plaint on the ground of maintainability, lack of jurisdiction and competence of plaintiff, mis-joinder of party and want of notice under section 80 of the Code of Civil Procedure, 1908.

4. Respondent has filed aforesaid suit against present applicant and respondents no. 2 to 5 before district court pursuant to provisions of Protection of Plant Varieties and Farmers' Rights Act, 2001. In the suit, Exhibit – 16 had been moved on behalf of present applicant – defendant no. 1 therein. Said application as referred to earlier, was rejected on 12-07-2017. Thereafter, on 15-03-2018 writ petition bearing no.. 4320 of 2018 challenging said order had been filed. While subsequently, it was considered that civil revision would be proper form in which challenge to order dated 12-07-2017 should have been posed. Said writ petition, therefore, was allowed to be converted into civil revision application and as such present civil application seeking condonation of delay in filing civil revision application.

5. Learned counsel for the applicant – defendant no. 1 refers to that subsequent to rejection of Exhibit – 16, defendants had also filed application under Exhibit-26 pursuant to section 9A

of the Code of Civil Procedure, 1908, the same was allowed on 07-08-2017. Present respondent no.1 – plaintiff had posed a challenge to said order under writ petition bearing no.11634 of 2017. However, the same was dismissed on 30-01-2018.

6. The applicant and other defendants had on 07-08-2017 moved application Exhibit – 36 seeking adjournment for hearing on application Exhibit – 8. It was allowed on the same day and hearing on Exhibit – 8 was posted to 16-08-2017. Thereafter, defendants had moved application Exhibit – 50 on 01-09-2017 seeking stay to hearing on exhibit 8 till issue framed under 9A is decided finally. This request was rejected on 01-09-2017 and matter was posted for arguments on Exhibit – 8 on 11-09-2017. Common challenge to order on both, Exhibits – 36 and 50 under writ petition bearing no. 11792 of 2017 had failed on 30-01-2018.

7. During the course of aforesaid proceedings while the learned counsel for applicant had come across an order on Exhibit – 16 and certain papers in respect of the same, it was realized that order on Exhibit – 16 takes into account only one of the grounds for rejection of plaint, however, substantive ground under Order VII, rule 11(a) of the Code of Civil Procedure which was imperative to be taken into account had not fallen for

consideration of the court. It is in these circumstances that delay has occurred which is computed to be of 247 days.

8. She further contends that, in the circumstances, while she had advised accordingly to applicant, it consumed little more time since in administrative process, matter was forwarded by legal department of the applicant to the managing director on 06-02-2018 and on sanction to the same, writ petition bearing no.4320 of 2018 was filed on 15-03-2018 causing some delay in official process since authorities concerned were engaged also in other official activities.

9. Learned counsel for respondent – plaintiff submits that going by the events as those have occurred, it would not be said those can be considered to be good for condonation of delay. While, orders on applications, subsequent to one on Exhibit – 16, were posed with challenge particularly which was passed on Exhibit – 26, as also on Exhibits 36 and 50, at the instance of applicant itself in writ petition no. 11792 of 2017 filed in September, 2017, the period thereafter would not be said to have been properly explained. He submits that even otherwise consumption of time for moving file from one department to another would not be said to be a sound reason constituting sufficient cause. For aforesaid purpose, learned counsel refers to and relies on two decisions of the supreme court in the cases of

Amalendu Kumar Bera vs The State of West Bengal, reported in 2013 ALL SCR 1340 and *State of U.P. Vs Amar Nath Yadav*, reported in 2014 (2) ALL MR 942 (S.C.).

10. He submits that having regard to aforesaid two decisions, present matter would not be a case wherein it can be said that reasons put-forth in the application are good reasons and sufficient cause for condonation of delay.

11. The first case of *Amalendu Kumar Bera (supra)*, relates to challenge before apex court against order by high court refusing to interfere with the order passed by district judge condoning delay in filing revision petition. In the peculiar facts of that case, the supreme court incidentally had made certain observations and those are reflected in the head-note. In other case, *State of U.P. (supra)*, it was a labour dispute and in the similar circumstances in other dispute, delay had been refused to be condoned and incidental observations there as well have been referred to in the head-note. In the peculiar facts involved in the cases before it, supreme court had considered the matter accordingly.

12. In present case, there does not appear to be any particular dispute upon advice by the counsel movement for challenge to rejection of application Exhibit – 16 had been made and official machinery was put in motion which consumed little time.

13. The supreme court in the case of *Collector, Land Acquisition, Anantnag vs. Mst. Katiji*, reported in *AIR 1987 SC 1553* enunciated principles in the matter of condonation of delay in paragraph no. 3 reading, thus :

“ 3. The legislature has conferred the power to condone delay by enacting S. 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) Ordinarily a litigant does not stand to benefit by lodging an appeal late;

(2) Refusing to condone delay can result in 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 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 hours delay, every seconds 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 was no presumption that delay is occasioned deliberately, or on account 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. "

14. The supreme court in the case of *Esha Bhattacharjee vs. Managing Committee of Raghunathpur Nafar Academy and others* reported in (2013) 12 SCC 649, has also given guidelines for consideration of delay condonation.

15. In the present matter it appears that while it had been realized that order impugned does not take into account one of the grounds particularly the ground referable to Order VII, rule 11 (a) of the Code of Civil Procedure, 1908 and thereafter there had been advice and official machinery had been in operation, it should receive some due.

16. In the circumstances, civil application is allowed subject to costs of Rs.2,500/- Costs be deposited in this court.

17. Civil application with aforesaid is disposed of.

SUNIL P. DESHMUKH
JUDGE

pnd/