

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CIVIL APPLICATION NO. 11727 OF 2018
IN
WRIT PETITION NO. 7736 OF 2009

SYED JAFAR MEHTABSAAB
VERSUS
THE DISTRICT COLLECTOR, LATUR AND ANOTHER

...
Mr. S.B. Halkude, Advocate for applicant
Mr. S.P. Tiwari, AGP for respondent-State
...

CORAM : SUNIL P. DESHMUKH, J.
DATE : 19-10-2018

ORDER :

1. Present application has been moved for setting aside order dated 21-06-2010, whereunder the petition in which rule had been issued, came to be dismissed since *bhatta* (process fee) had not been paid. It further appears that the high court had earlier been moved for setting aside that order, however, the civil application had not been prosecuted and was dismissed.

2. Learned counsel for applicant submits that it was understanding given that the matter would come up in due course for final hearing which takes years. In the meanwhile, certain domestic problems as well had arisen and the applicant had been engaged. The applicant had not been aware of further

developments in the civil application and had not been notified anything about the same.

3. While the matter was circulated for hearing in July, 2018, the developments, as referred to above having taken place, had come to the fore and an order came to be passed and, thereafter, present application has been moved. Delay, as such, is sought to be accounted for accordingly.

4. Learned Assistant Government Pleader finds it difficult that for about eight years, there had been no prosecution by the applicant. He submits that condonation of delay would not be proper in the circumstances.

5. Although learned Assistant Government Pleader has resisted the application, it appears that rule had been issued in writ petition and civil application for setting aside Registrar's order, had also been moved. It is the case of applicant that he had not been aware of further proceedings and he was engaged in some domestic problems. Veracity of the circumstances, is not seriously disputed.

6. In the circumstances, having regard to guidelines of supreme court in the case of *Collector, Land Acquisition, Anantnag V/s. Ms. Katiji and others* reported in *AIR 1987 SC 1353*, paragraph no.3

thereof, 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. ”

as also, guidelines issued by supreme court under its decision, in the case of *Esha Bhattacharjee V/s. Managing Committee of Raghunathpur Nafar Academy and others* reported in (2013) 12 Supreme Court Cases 649, as contained in paragraphs no. 21 and 22 thereof, reading thus,

“ 21. From the aforesaid authorities the principles that can broadly be culled out are:

21.1. (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.

21.2. (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.

21.3. (iii) Substantial justice being paramount and pivotal the technical considerations should not be given undue and uncalled for emphasis.

21.4. (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.

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

21.6. (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.

it appears to be expedient to allow the application, subject of course to payment of costs.

7. As such, civil application is allowed in terms of prayer clause (B). Delay is condoned, subject to payment of costs of Rs.10,000/- (Rs. Ten Thousand). Amount of Rs.10,000/- be deposited in the High Court within a period of six (6) weeks from today and respondents would be at liberty to withdraw the same.

8. In case of failure to deposit the amount as aforesaid, this order shall be deemed to have been recalled without further reference to the court.

9. Civil application is disposed of accordingly.

[SUNIL P. DESHMUKH]
JUDGE

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