

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

**CIVIL APPLICATION NO.1178 OF 2016
IN
SECOND APPEAL STAMP NO.27818 OF 2014**

Baliram s/o. Namdeo Adkine,
Age: 59 Yrs. Occu:Agril.
R/o. Injangaon, Tq.Basmathnagar,
Dist:Hingoli. .. **APPLICANT**
[Ori.Deft.]

VERSUS

1. Shaikh Miya s/o. Shaikh Chand
[Died] Through L.Rs.

1a. Shaikh Ismile s/o. Shaikh Miya
Age: 30 Yrs. Occu:Agril.
R/o.Penchanpura Hingoli
Tq. & Dist:Hingoli.

1b. Bibi Begam w/o.Shaikh Miya
Age: 54 yrs. Occu:Household,
r/o. as above. ..**RESPONDENTS**
[Ori.Plaintiffs]

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Mr.S.K.Adkine, Advocate for the applicant
Mr.S.S.Dargad, Advocate for the respondents.

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**CORAM : A.M.DHAVALA, J.
DATE : 24.10.2018**

ORDER:

1] This is an application for
condonation of delay of 802 days caused in
preferring the Second Appeal.

2] Heard Mr.S.K.Adkine, learned Advocate for the applicant and Mr.S.S.Dargad, learned Advocate for the respondents.

3] The applicant herein is original defendant. The respondent - plaintiff had filed Regular Civil Suit No.98 of 1995 against him for declaration of ownership of 94 R. land and possession of 64 R. land from the land block No.82 at village Kanhergaon. The said suit was decreed on merits. The decree for declaration and possession as prayed was passed on 03.04.2001. Thereafter, the defendant filed Regular Civil Appeal No.80 of 2004 before the District Judge, Basmathnagar, District Hingoli. After hearing both the parties, the District Judge-1, Hingoli dismissed the said Appeal with costs on 21st April, 2012. The present Second Appeal along with application for condonation of delay has been filed on 14th October, 2014, i.e. almost two and half years after the

judgment and decree of the First Appellate Court. The applicant has given following reasons for condonation of delay:

i] Due to economically weak condition;

ii] Sole respondent died and he was not aware of his legal heirs and the time was required to obtain death certificate.

4] Mr.Dargad, learned Advocate for the respondents has opposed the application. Mr.Dargad, learned Advocate submits that the sole respondent died on 22nd November, 2012. It is claimed that the original plaintiff had filed Misc. Application [NRJE] No.1/2011 before the Civil Judge Senior Division, Basmat, under Section 152 of the Code of Civil Procedure for correction in the decree; in that case the notice was issued to the present applicant and during pendency of the said proceedings, the respondent - original plaintiff has died. This fact was brought to

the notice of the Court. The amendment was carried out on 25th April, 2013. The present respondent—original plaintiff had prosecuted the said Misc. Application. There is no due diligence on the part of the present applicant. The respondents are not getting fruits of the decree passed in the suit instituted in 1995.

5] Mr.Adkine, learned Advocate also argued that the respondent-original plaintiff had not taken up the execution proceedings, and therefore, the applicant did not make any hurry to file appeal.

6] After considering the arguments, I find point for my consideration is as to whether the applicant has shown sufficient cause for condonation of delay of 2 and $\frac{1}{2}$ years. My answer to it is in the negative. The principles for condonation of delay are laid down by the Hon'ble Supreme Court in Esha

Bhattacharjee Vs. Managing Committee,

Raghunathpur Nafar Academy and others reported in
[(2013) 12 SCC 649]. The relevant guidelines are
as follows :

“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.

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

21.8 (viii) There is a distinction between inordinate delay and a delay of short duration of 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.

21.9 (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.

21.10 (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 fact such a litigation.

21.11 (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.

21.12 (xii) The entire gamut of facts are to be carefully scrutinised and the approach should be based on the paradigm of judicial discretion which is founded on objective reasoning and not on individual perception.

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

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

22.1 (a) An application for condonation of delay should be drafted with careful concern and not in a haphazard 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.

22.2 (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.

22.3 (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.

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

7] In Basawaraj Vs. Land Acquisition Officer, reported in [2013] 14 SCC 81, the Hon'ble Supreme Court laid down following principles :-

"Sufficient cause is a cause when a defendant could not be blamed for his absence. It means party should not have acted in negligent manner. Unless satisfactory explanation is furnished, Court should not allow the application for condonation of delay. The Court has to examine whether mistake is bona fide or was merely a device to cover an ulterior purpose."

8] In P.Rameshchandra Rao Vs. State of Karnataka reported in [(2002) 4 SCC 578], it

is held that “judicially engrafting principles of limitation amounts to legislating and would fly in the face of law laid down by the Constitution Bench in Abdul Rehman Antulay Vs. R.S. Nayak.”

9] In Kumar Vs. Kamata ICU Bank reported in 2013 (11) SCC 668, it is laid down that bald statements with no reasons as to non-intimation cannot be sufficient cause. In this case, the High Court had condoned delay of 290 days and 785 days and though the said order was not directly challenged in appeal from the main order, the Apex Court held that the inordinate delay should not have been condoned.

10] In Union of India & ors. Vs. Nripen Sarma, reported in 2013 (4) SCC 57, when the explanation given by the State for condonation of delay of 239 days in preferring the appeal was not found

satisfactory, the delay was rightly not condoned by the High Court and the same was upheld by the Supreme Court.

11] In the above referred cases, the law as laid down by the Apex Court shows that the Court should always try to decide the matters on merits and justice should not be denied on technical grounds, but the period of limitation prescribed under the law should be respected and if there is sufficient cause, the delay can be condoned. The existence of sufficient cause is *sine qua non* for condonation of delay. When there is sufficient cause, it can be liberally construed in the interest of justice.

12] In the present case, I find that the contention that the applicant was economically weak and therefore could not file appeal in time, cannot be considered as a legal ground to seek condonation of delay.

The applicant could have sought legal aid from the State. Poverty cannot be raised as a ground for condonation of delay.

13] The contention is that the respondent - original plaintiff in the First Appeal has died and time was required for collecting his death certificate and names of his legal heirs. This ground has no substance. The limitation period was for 3 months from 24.04.2012. The respondent - original plaintiff was very much alive for a period of 7 months. The delay of around 4 months before his death has not been explained. Besides, the time required for obtaining death certificate and legal heirs cannot exceed unreasonably. The contention of the opponents shows that they had carried out amendment in the Misc. Application; wherein they had disclosed the names of the legal heirs and also factum of death of the respondent-original plaintiff. In such

situation, the delay of more than 1 and $\frac{1}{2}$ years after this knowledge is totally unexplained. The contention that the respondent – original plaintiff had not filed execution proceedings and therefore the applicant could not file appeal, deserves to be discarded at the outset. Such argument cannot be permitted.

14] I find that there is absolutely no reason explained for condonation of delay. The argument about good case on merits cannot be considered in the application for condonation delay. In the result, such huge delay caused in preferring the Second Appeal cannot be condoned. Hence, the Civil Application for condonation of delay is rejected.

15] Civil Application No.1179 of 2016 does not survive and the same stands disposed of accordingly.

16] 3/4th Court fees on the Second Appeal
be refunded to the applicant / appellant.

[A.M.DHAVALA]
JUDGE

DDC