

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CIVIL APPLICATION NO. 11868 OF 2017
IN
FIRST APPEAL ST. NO. 30432 OF 2017

The Ex. Engineer

Applicant

Versus

Pandurang Vitthal Jadhav
& others

Respondents

Mr. U.P. Giri, advocate for applicant.

CORAM : M.S. SONAK, J.
DATE : 10th JANUARY, 2018

PER COURT:

1. This is an application seeking condonation of delay of 1275 days in instituting appeal against judgment and award dated 12.12.2013 made by the reference Court.
2. In the civil application, all that is stated is that some time was required to seek advise and instructions from the higher authorities to seek legal remedy in the matter. It is further stated that the applicant received instructions only in the last week to challenge the award before this Court. This application has been filed on 23.01.2017 and infact, the award was made by the reference Court on 12.12.2013.
3. In the second paragraph to the application, it is stated that certified copy was applied for on 12.12.2013 itself but, the same

was delivered on 17.01.2014. The period between 12.12.2013 and 17.01.2014 is not doubt required to be excluded. However, even if, the said period is excluded, there is inordinate delay of over 1250 days which is not at all explained. On perusal of the application, which comprises of only three paragraphs and out of which, only third paragraph states that prima facie case has been made out in the main appeal, it is not possible to condone the delay. In paragraph no.3 of the civil application, it is stated that delay "is of very few days and not deliberate and intentional". It is possible that this error which is apparent on the face of record is a result of cut and paste facility available in the computer system. Nevertheless, this Court cannot subscribe to the position that delay of 1275 days can qualify as delay of very few days.

4. The decision in N.Balakrishnan vs. M. Krishnamurthy, reported in [1998 (7) SCC 123] requires the applicant to demonstrate good faith before claiming exercise of discretion. The decision, no doubt, states that the length of delay is not decisive but the quality of explanation is the determinative factor. In this case, quality of explanation is too poor to constitute any sufficient cause. Observation of Hon'ble Supreme Court in the case of Collector Land Acquisition vs Mst. Katiji & Ors., reported in [1987 (2) SCC 107], no doubt, absolves explanation of each day's delay. However, the observation does not mean that delay of 1275 days is to be condoned as a matter of routine in the absence of any sufficient cause.

5. The averments in the application seeking condonation, are quite casual and unverifiable. On basis of such routine averments,

the State, cannot, in every case, plead that delay should be condoned, because it is an impersonal agency, which is required to act through its officers. The plight of land losers, who have been deprived of compensation for several years. cannot be ignored.

6. In Pundlik Jalam Patil (Dead) By Lrs. vs. Executive Engineer, Jalgaon, Medium Project and anr., reported in [(2008) 17 SCC 448], the Hon'ble Supreme Court has held that pursuing stale claims and multiplicity of proceedings in no manner subverts public interest. These public interest parameters ought to be kept in mind by the courts while exercising the discretion dealing with the application filed under section 5 of the Limitation Act. Dragging the land-losers to courts of law years after the termination of legal proceedings would not serve any public interest. Settled rights cannot be lightly interfered with by condoning inordinate delay without there being any proper explanation of such delay on the ground of involvement of public revenue. This serves no public interest. Though, the State or its instrumentalities seeking condonation of delay may be entitled to certain amount of latitude but the law of limitation is same for citizens and for governmental authorities. It would be a different matter where the Government makes out a case where public interest was shown to have suffered owing to acts of fraud or collusion on the part of its officers or agents and where the officers were clearly at cross purposes with it. In a given case, if any, such facts are pleaded and proved they cannot be excluded from consideration. In cases with which we are concerned, no such facts have been either pleaded or proved.

7. In Registrar of Companies vs. Rajshree Sugar & Chemicals Ltd. and ors., reported in [2(2000) 6 SCC 133], the Hon'ble Supreme Court held that though some latitude has to be shown to the Government in deciding the question of delay, that does not give a licence to the officers of the Government to shirk their responsibility to act with reasonable expedition.

8. In Esha Bhattacharjee vs. Managing Committee of Raghunathpur Afar Academy & ors., reported in [3(2013) 12 SCC 649], the Hon'ble Supreme Court has held that 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. Further, the Hon'ble Supreme Court has held that an application for condonation of delay should not be dealt with in a routine manner on the basis of individual philosophy which is basically subjective. 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.

9. In Postmaster General and Ors. vs. Living Media India Limited and anr., reported in [4(2012) 3 SCC 563], the Hon'ble Supreme Court declined to condone the delay of 427 days in filing the special leave petition by observing that department cannot take advantage of various earlier decisions where a very liberal approach was adopted when it came to condone delay on the part of Government agencies. The Hon'ble Supreme Court observed

that the claim on account of impersonal machinery and inherited bureaucratic methodology of making several notes cannot be accepted in view of the modern technologies being used and available. The law of limitation undoubtedly binds everybody including the Government. It is the right time to inform all the government bodies, their agencies and instrumentalities that unless they have reasonable and acceptable explanation for the delay and there was bonafide effort, there is no need to accept the usual explanation that the file was kept pending for several months/years due to considerable degree of procedural red-tape in the process. The government departments are under a special obligation to ensure that they perform their duties with diligence and commitment. Condonation of delay is an exception and should not be used as an anticipated benefit for government department. The law shelters everyone under the same light and should not be swirled for the benefit of a few. Considering the fact that there was no proper explanation offered by the Department for the delay except mentioning of various dates, the Hon'ble Supreme Court held that, the Department has miserably failed to give any acceptable and cogent reasons sufficient to condone such a huge delay.

10. In Basawaraj and anr. vs. Special Land Acquisition Officer, reported in **[(2013) 14 SCC 81]** the Hon'ble Supreme Court went on to observe that the law on the issue can be summarised to the effect that where a case has been presented in the court beyond limitation, the applicant has to explain the court as to what was the "sufficient cause" which means an adequate and enough reason which prevented him to approach the court within

limitation. In case a party is found to be negligent, or for want of bona fide on his part in the facts and circumstances of the case, or found to have not acted diligently or remained inactive, there cannot be a justified ground to condone the delay. No court could be justified in condoning such an inordinate delay by imposing any condition whatsoever. The application is to be decided only within the parameters laid down by this Court in regard to the condonation of delay. In case there was no sufficient cause to prevent a litigant to approach the court on time condoning the delay without any justification, putting any condition whatsoever, amounts to passing an order in violation of the statutory provisions and it tantamounts to showing utter disregard to the legislature.

11. The Division Bench of this Court in State of Maharashtra and ors. vs. Vithu Kalya Govari and ors., reported in [2008(6) Mh.L.J.239] has observed that the State is not expected to be negligent or to take no action for years and let the matters become time barred on account of its negligence and inaction. The usual reason of "official hassle" or "approval at different levels" is hardly sufficient to justify condonation of delay of about two years. In law, advantage has accrued to the non-applicants claimants and the same cannot be withdrawn in a mechanical manner and that too without any sufficient cause being shown by the applicants. Despite, awards/judgments of the Courts, which have attained finality, the claimants are not permitted to receive compensation in respect of their lands, which came to be compulsorily acquired, is itself, sufficient prejudice to them. Therefore, before any delay can be condoned and the claimants subjected to further prolonged

litigation, the onus to show sufficient cause lies upon the applicant-State.

12. Applying the aforesaid principles to the facts of the present case, there is no case made out to condone the delay. The application for condonation of delay is therefore dismissed. As a result, the main appeal as well as the application for stay do not survive and the same are also disposed of.

(M.S. SONAK, J.)

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