

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

**CIVIL APPLICATION NO. 6859 OF 2015
IN
SECOND APPEAL (ST) NO. OF 35432 OF 2010**

Parmeshwar Dada Koli & Ors.

...Applicants

VERSUS

Ambadas Kondiba Marale & Ors.

...Respondents

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Mr Vikram S. Undre, Advocate for the applicants
Mr D. A. Madake h/f Mr Sandeep Y. Mahajan, Advocate for
respondent No. 1

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CORAM: A. M. DHAVALÉ, J.

DATED : 17th December, 2018.

ORAL ORDER :

1. This is an application for condonation of 2355 days' delay in preferring the instant Second Appeal.

2. The applicants herein are the original defendants in suit bearing RCS No. 86/1987 filed in the court of Paranda, Dist. Osmanabad, by the respondent No.1/orig. plaintiff. As per the suit, the defendants' father Dada Koli executed agreement to sell dt.07.06.1977, whereby he agreed to sell his land adm. 1H. 21R. (3 acres) in Block No. 184 to the plaintiff for Rs. 3,000/-. The plaintiff advanced earnest of Rs.2,900/- and the balance was only Rs.100/-. He was put in possession. The plaintiff claimed that, he was always ready and willing to pay the balance amount and obtain the

sale deed. Since Dada Koli started obstructing him on 10.04.1987, the suit came to be filed 10 years after the agreement to sell on 24.07.1987. The suit was filed against legal heirs, as Dada Koli was dead. The defendants raised various defences. It is their contention that, there was no agreement to sell but it was a money lending transaction. There was no payment of Rs. 2900/-. The suit land was jointly owned by Dada and defendant Nos. 1 and 2. Dada had obtained loan of Rs. 400/- for the marriage of his daughter. Thumb impressions of Dada and defendant No. 2 were obtained by deceit.

3. The learned Civil Judge after recording the evidence decreed the suit by judgment dt. 26.02.1993 and also granted injunction to protect the possession of the plaintiff. The aggrieved defendants preferred appeal being RCA No. 524/1997. There was small delay in filing the appeal and after condonation of the same, the appeal came to be registered after four years in 1997. By judgment dt. 16.03.2004, learned District Judge, Osmanabad dismissed the appeal with costs. Against these concurrent findings, the original defendants preferred the present appeal.

4. Mr. V. S. Undre, learned counsel for the appellant argued that the courts below have not considered the delay of 10 years in filing the suit after the death of Dada. In short, he submits that the

appellants have good case on merits. The second appeal along with this application for condonation of delay is filed on 26.11.2010. There is delay of 6 years 5 months and 15 days (2355 days). The reasons for delay are as follows:

- (i) Delay is not intentional or deliberate.
- (ii) The appellants are residing in a remote village in Tq. Paranda, Dist. Osmanabad.
- (iii) They are illiterate persons.
- (iv) Their advocate had not given them information.
- (v) They required time to collect funds.

5. The respondent has filed reply strongly opposing the application. He has claimed that, after the judgment and decree, he had issued notice of the caveat filed and the notices were refused by the applicants. They claimed that, the litigants are bound to keep in touch with their advocate and make inquiry periodically about the progress of the case. It is not acceptable that, the applicants did not make any enquiry with their advocate for so many years. If their case is to be accepted, there is gross negligence on their part. Mere blaming the advocate is not enough. There should be some diligence on the part of the parties. The grounds stated are not sufficient to pardon such a huge delay. On this general ground, such a huge delay cannot be condoned.

6. Mr Undre relied on Mithailal Dalsangar Singh Versus Annabai Devram Kini reported in 2003 (4) Mh.L.J. 721. In this case, one of the respondents Bharat Singh died on 05.04.1997. The appeal came up for hearing on 17.06.2000 and the appellants came to know about the death of Bharat. At that time, they filed application on 29.06.2000 to bring legal heirs on record. The ld. Single Judge allowed the prayer holding that sufficient cause for condonation of delay was established. The said order was challenged before the Division Bench and the said order was set aside. Hence, the matter went to the Apex Court. In this context, while setting aside the order of Division Bench, the Apex Court observed that,

8. *In as much as the abatement results in denial of hearing on the merits of the case, the provision of abatement has to be construed strictly. On the other hand, the prayer for setting aside an abatement and the dismissal consequent upon an abatement, have to be considered liberally. A simple prayer for bringing the legal representatives on record without specifically praying for setting aside of an abatement may in substance be construed as a prayer for setting aside abatement. So also a prayer for setting aside abatement as regard one of the plaintiffs can be construed as a prayer for setting aside the abatement of the suit in its entirety. Abatement of suit for failure to move an application for bringing the legal representatives on record within the prescribed period of limitation is automatic and a specific order dismissing the suit as abated is not called for. Once the suit has abated as a matter of law, though there may not have been passed on record a specific order dismissing the suit as abated, yet the legal representatives proposing to be brought on record or any other applicant proposing to bring the legal representatives of the deceased party on record would seek the setting aside of an abatement. A prayer for bringing the legal representatives on record, if allowed, would have the effect of setting aside the abatement as the relief of setting aside abatement though not asked for in so many*

words is in effect being actually asked for and is necessarily implied. Too technical or pedantic an approach in such cases is not called for.

9. *The courts have to adopt a justice oriented approach dictated by the upper most consideration that ordinarily a litigant ought not to be denied an opportunity of having a lis determined on merits unless he has, by gross negligence, deliberate inaction or something akin to misconduct, disentitled himself from seeking the indulgence of the court.*

7. Further reliance was placed on the judgment of the Apex Court in the case of *Collector, Land Acquisition, Anantnag Versus. Katiji* reported in 1987 AIR (SC) 1353. In this case, there was delay of 4 days on the part of the Government in preferring the appeal against enhancement of compensation under Land Acquisition Act. The said application was rejected and in this context, the apex Court laid down certain guidelines in para 3 as follows.

3.

"Any appeal or any application, other than an application under any of the provisions of Order XXI of the Code of Civil Procedure, 1908. may be admitted after the prescribed period if the appellant or the applicant satisfies the court that he had sufficient cause for not preferring the appeal or making the application within such period."

1. *Ordinarily a litigant does not stand to benefit by lodging an appeal late.*

2. *Refusing to condone delay can result in a 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 a 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 hour's delay, every second's 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 is no presumption that delay is occasioned deliberately, or on account of 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.

Making a justice-oriented approach from this perspective, there was sufficient cause for condoning the delay in the institution of the appeal. The fact that it was the 'State' which was seeking condonation and not a private party was altogether irrelevant. The doctrine of equality before law demands that all litigants, including the State as a litigant, are accorded the same treatment and the law is administered in an even handed manner. There is no warrant for according a stepmotherly treatment when the 'State' is the applicant praying for condonation of delay. In fact experience shows that on account of an impersonal machinery (no one in charge of the matter is directly hit or hurt by the judgment sought to be subjected to appeal) and the inherited bureaucratic methodology imbued with the note making, file pushing, and passing-on-the-buck ethos, delay on its part is less difficult to understand though more difficult to approve. In any event, the State which represents the collective cause of the community, does not deserve a litigant-non-grata status. The Courts therefore have to be informed with the spirit and philosophy of the provision in the course of the interpretation of the expression "sufficient cause".

8. In Sonerao Sadashivrao Patil & Anr. Versus

Godawaribai W/o. Laxmansingh Gahirewar & Ors. reported in

1999 (2) Mh.L.J. 272, there was delay of 104 days to challenge the

ex-parte decree. It was a case that, there was compromise between the parties and the parties wanted to file compromise terms. The plaintiff had assured that, the suit would not proceed and still the suit proceeded ex parte in their absence and there was delay in filing the appeal. The Addl. District Judge rejected the application for condonation of delay. In this context, relying on N. Balakrishnan Versus M. Krishnamurthy reported in AIR 1998 SC 3222, the delay was condoned.

9. Mr Mahajan, the learned counsel for the respondent herein submits that, the appellants were served with the notice of caveat in April-2004 but they had refused to accept the notice. He relied on Esha Bhattacharjee versus Managing Committing of Raghunathpur Nafar Academy reported in AIR 2014 SC 67. In this case, the counsel for the petitioner had communicated the school authorities about the order in favour of a teacher approving her appointment dt. 25.02.2004. Still, she was not admitted as a teacher hence Contempt Petition was filed on 24.06.2006. District Inspector of schools directed the school authorities to comply with the directions of the High Court. On 21.11.2009, the appellant was allowed to join the duties and there were appearances and directions during intermediate period to the school authorities. In December-2010, after a period of six years, appeal was preferred along with

application for condonation of delay. The Apex Court took resume of its own several judgments and laid down the guidelines as follows:

15. From the aforesaid authorities the principles that can broadly be culled out are:
 - 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.
 - 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 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.

10. Indeed, the provisions of Limitation Act are not meant to destroy the rights of the parties but those cannot be totally overlooked so as to make the Limitation Act redundant and

meaningless. In this regard, I rely on P. K. Ramchandran versus State of Kerala reported in AIR 1998 SC 2276, it is that – Law of limitation may harshly affect a particularly party but it has to be applied with all its rigour when the statute so prescribe and the Courts have no power to extend the period of limitation on equitable grounds. The discretion exercised by the High Court was, thus, neither proper nor judicious. The order condoning the delay cannot be sustained.

11. The principles laid down in these judgments are required to be considered in the light of the facts of the particular case. The Apex Court has observed in Esha Bhattacharjee's case as follows:-

“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.”

12. The parties are residing in remote area or they are illiterate or poor or they were not informed by their advocate can be grounds to condone the small delays. The absence of any deliberate or intentional act is not very much material for condonation of delay.

13. It must be noted that, the limit is fixed for filing suit which is 3 years or 12 years comparatively for long period than the

time limit fixed for filing the appeals which is between 30-90 days and therefore the provision was made u/s 5 to condone the delay. The court always makes an endeavour to see that the *lis* between the parties is heard on merits and the decision is rendered on merits but the court cannot condone the gross negligence which results in huge delay.

14. The facts that the advocate has not given intimation to a party has also been considered for condonation of delay in some cases. I rely on following judgments:

- (i) **Lanka Venkateswarlu Vs. State of A.P.**
2011 (4) Mh.L.J. 104

In this case, it is held, the Court do not enjoy unlimited and unbridled discretionary powers and discretion has to be exercised within reasonable bounds, known to law. Consideration of law caused by inefficiency and ineptitude of the Government Pleaders would be improper.

- (ii) **Baswaraj v. Land Acquisition Officer**
2013 (14) SCC 81

11. *The expression “sufficient cause” should be given a liberal interpretation to ensure that substantial justice is done, but only so long as negligence, inaction or lack of bona fides cannot be imputed to the party concerned, whether or not sufficient cause has been furnished, can be decided on the facts of a particular case and no straitjacket formula is possible. (Vide: [Madanlal v. Shyamlal](#), AIR 2002 SC 100; and [Ram Nath Sao @ Ram Nath Sahu & Ors. v. Gobardhan Sao & Ors.](#), AIR 2002 SC 1201.)*

12. *It is a settled legal proposition that law of limitation may harshly affect a particular party but it has to be applied with all its rigour when the statute so prescribes. The Court has no power to extend the period of limitation on equitable grounds. “A result*

flowing from a statutory provision is never an evil. A Court has no power to ignore that provision to relieve what it considers a distress resulting from its operation.” The statutory provision may cause hardship or inconvenience to a particular party but the Court has no choice but to enforce it giving full effect to the same. The legal maxim “dura lex sed lex” which means “the law is hard but it is the law”, stands attracted in such a situation. It has consistently been held that, “inconvenience is not” a decisive factor to be considered while interpreting a statute.

(iii) **P. K. Ramchandran Vs. State of Kerala**
AIR 1998 SC 2276

In this case, it is held, law of limitation may harshly affect a particular party but it has to be applied with all its rigour when the statute so prescribe and the Courts have no power to extend the period of limitation on equitable grounds. The discretion exercised by the High Court was, thus, neither proper nor judicious. The order condoning the delay cannot be sustained.

(iv) **Balwant Singh (Dead) v. Jagdish Singh and Ors.**
AIR 2010 SC 3043

13. We may state that even if the term ‘sufficient cause’ has to receive liberal construction, it must squarely fall within the concept of reasonable time and proper conduct of the concerned party. The purpose of introducing liberal construction normally is to introduce the concept of ‘reasonableness’ as it is understood in its general connotation. The law of limitation is a substantive law and has definite consequences on the right and obligation of a party to arise. These principles should be adhered to and applied appropriately depending on the facts and circumstances of a given case. Once a valuable right, as accrued in favour of one party as a result of the failure of the other party to explain the delay by showing sufficient cause and its own conduct, it will be unreasonable to take away that right on the mere asking of the applicant, particularly when the delay is directly a result of negligence, default or inaction of that party. Justice must be done to both parties equally. Then alone the ends of justice can be achieved. If a party has been thoroughly negligent in implementing its rights and remedies, it will be equally unfair to deprive the other party of a valuable right that has accrued to it

in law as a result of his acting vigilantly. Liberal construction cannot be equated with doing injustice to the other party. In the case of [State of Bihar v. Kameshwar Prasad Singh](#) [(2000) 9 SCC 94], this Court had taken a liberal approach for condoning the delay in cases of the Government, to do substantial justice.

15. However, the reasons stated should be genuine and not fake. In the present case, the first appeal was filed in 1993 which was admitted in 1997. It was pending for seven years i.e. upto 2004. The appellants are residing at a distance of 70 km. from district place Osmanabad where the appeal was pending. They were supposed to make enquiry with the advocate periodically, if not every month, at least once in six months or at least once in a year. In *Katari Suryanarayana & Ors vs. Koppiseti Subba Rao & Ors.* reported in (2009) 11 SCC 183, the Apex Court has observed that, if the appellant is not making enquiry even once in a year, it amounts to gross-negligence. In the present case, the appeal was disposed of in 2004 and the appellants claimed that, they were not aware about the decision for 6 years. This act on the part of the appellants is of gross negligence if not deliberate or intentional. Such a huge delay cannot be condoned on such bald statement.

16. In N. Balakrishnan's case (supra), there was delay of 883 days to get the *ex parte* decree set aside. The advocate for the appellant had not pursued the matter. The appellants had initiated action against him and the Consumer Court had awarded

compensation of Rs. 50,000/- from the advocate to the appellant. There was delay of only around 2½ years. The delay was condoned subject to costs of Rs. 10,000/-. Learned advocate Mr. Undre submits that, in the present case also, some costs by way of compensation be awarded and the delay should be condoned so that the rights of the appellants based on strong merits should not be taken away. In this judgment, it is observed that:

11. Rule of limitation are not meant to destroy the right of parties. They are meant to see that parties do not resort to dilatory tactics, but seek their remedy promptly. the object of providing a legal remedy is to repair the damage caused by reason of legal injury. Law of limitation fixes a life-span for such legal remedy for the redress of the legal injury so suffered. Time is precious and the wasted time would never revisit. During efflux of time newer causes would sprout up necessitating newer persons to seek legal remedy by approaching the courts. So a life span must be fixed for each remedy. Unending period for launching the remedy may lead to unending uncertainty and consequential anarchy. Law of limitation is thus founded on public policy. It is enshrined in the maxim Interest reipublicae up sit finis litium (it is for the general welfare that a period be putt to litigation). Rules of limitation are not meant to destroy the right of the parties. They are meant to see that parties do not resort to dilatory tactics but seek their remedy promptly. The idea is that every legal remedy must be kept alive for a legislatively fixed period of time.

17. In the light of the facts stated above, this huge delay of 2355 days cannot be condoned on bald statement that applicants' advocate did not give me information about the decision for almost seven years. In view of the above, the application for delay

condonation deserves to be rejected. Hence, the following order is passed.

ORDER

. The Application is rejected. No order as to costs.

(A. M. DHAVALE)
JUDGE

Punde