

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.453 OF 2018
(Kavita Suresh Sapkal Vs. Bhagwan Savlaram Bhalerao)

Mr.S.D.Tawshikar, Advocate for the petitioner.
Mr.D.A.Naik, Advocate for the respondent.

(CORAM : RAVINDRA V. GHUGE, J.)

DATE : 26/03/2018

PER COURT :

1. The petitioner / original plaintiff is aggrieved by the order dated 16/09/2017 by which MCA No.1/2017 (*wrongly typed in the impugned order as RCS No.1/2017*) has been rejected and the delay of 120 days caused in seeking restoration of RCS No.80/2012 has been disallowed.

2. I have considered the strenuous submissions of the learned Advocates. The petitioner/plaintiff submits that her suit was dismissed in default on 01/08/2016. She filed MCA No.1/2017 on 27/12/2016 praying for condonation of delay so as to enable her to seek the restoration of the suit. The delay is of about 120 days. The reasons cited are that her advocate used to visit Aurangabad for the proceedings by travelling from Jalna. She came to know that her suit was dismissed when she had approached the Bhokardan Tehsil

Office in December 2016.

3. It is further canvassed that the petitioner gains no advantage by ignoring her suit. In fact, the dismissal of her suit has caused an irreparable harm to her. The doors of litigation are virtually closed and she will lose a valuable right in relation to her immovable property if this Court sustains the impugned order.

4. The respondent has supported the impugned order.

5. The Hon'ble Apex Court in Collector, Land Acquisition Anantnag and another Vs. Mst. Katiji and others [(1987) 2 SCC 107] and in Esha Bhattacharjee Vs. Managing Committee of Raghunathpur Nafar Academy and others [2013(12) SCC 649] has concluded that the Court must consider the following factors while dealing with an application for condonation of delay :-

[a] Whether laches, ulterior or oblique motives are attributable to the conduct of the applicant ?

[b] Whether undue advantage is being taken by the applicant by causing the delay ?

[c] Whether a valuable right of litigation would be lost if the delay is not condoned and whether the litigant would be

rendered remediless ?

6. The principles laid down by the Hon'ble Apex Court in Esha Bhattarcharjee case (supra) read as under :-

“(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."

7. It is apparent that the petitioner, who is a lady litigant, is litigating against the defendant. Ancestral property is the subject matter of the suit. She derives no advantage by neglecting her suit and she would be rendered remediless if the delay is not condoned and the suit is not restored.

8. Considering the above, I am of the view that a pragmatic approach has to be adopted rather than pitting technicalities as against the right to justice. A pedantic approach in such matters is not appreciable.

9. This petition is, therefore allowed. MCA No.1/2017 is allowed

and the impugned order dated 16/09/2017 is quashed and set aside. The petitioner and the respondent agree to appear before the Trial Court in the pending application seeking restoration of the suit on 21/04/2018. The Trial Court would register the said application and by recording the appearance of the parties and decide the said application as expeditiously as possible.

(RAVINDRA V. GHUGE, J.)