

Vidya Amin.

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

**CRIMINAL APPLICATION NO. 793 OF 2018
IN
CRIMINAL APPEAL (St.) NO. 531 OF 2018**

Pankaj Ramnaresh Saraf ... Applicant
vs.
Rutuja Shah & Ors. ... Respondents

Mr. Sandip Karnik, Advocate for the applicant.
Mr. Arvind Lakhawat a/w. Ms. Madhu Gadodia i/b. Naik and Naik Company, Advocate for respondent no. 1.
Mr. Avinash Avhad, Spl. P.P. a/w. Mrs. M.M. Deshmukh, APP for the respondent no. 2-State.

**CORAM: Mr.S.S. SHINDE &
Mrs.MRIDULA BHATKAR, JJ..
DATED: 24th September, 2018**

ORDER : (PER MRS. MRIDULA BHATKAR, J.)

1. This Application is filed for condonation of delay of one year, 5 months and 4 days in filing the Appeal. The applicant has filed the Appeal challenging the order dated 28th September, 2016 passed by the Special Judge, M.P.I.D. Act and Additional Sessions Judge, City Civil and Sessions Judge, Greater Mumbai by which the application of respondent no. 1/objector, in M.P.I.D. case was conditionally allowed wherein the order of attachment of Fixed Deposit Account and Saving Bank Account of respondent no. 1 is cancelled and has released the funds on certain conditions.

2. The applicant is the first informant and the investor, who is affected due to the offences committed by the accused in M.P.I.D. Special Case No. 1 of 2014. Respondent no. 1 is a daughter of one of the accused persons. She appeared in the said case opposing the attachment order, which was allowed. Hence, the applicant has filed Appeal. However, there is delay of one year 5 months and four days in filing Appeal.

3. The learned counsel for the applicant has submitted that the applicant is the first informant and is contesting the main matter. 13000 investors have been duped and they are waiting for the recovery of the money which has been lost in NSEL scam of the accused. There is a deposit of Rs.85,00,000/- in the account of respondent no. 1. The first informant has been pursuing this matter since beginning and also has been filing Intervention Application for various proceedings, which is pending before the Court. The delay of one and half year is caused due to such intervention and continuous research the informant has to do in following various matters of 13000 investors, therefore, he could not file the present Appeal before the Court within the stipulated time. He also submitted that the applicant also has to look after his business to

earn livelihood and has to travel extensively for the purpose of his business, therefore, he could not get time to have conference with the advocate to file the present Appeal. The learned counsel has submitted that different angles are involved in the matter, thus, the delay is not deliberate and there is bonafide mistake, so it is to be appreciated and delay be condoned.

4. The learned counsel for respondent no. 1 strongly objected this Application mainly on the ground that sufficient cause is not made out by the applicant. The learned counsel has submitted that it is necessary for the applicant to give accounts of the delay satisfactorily, however, this delay has remained unexplained. It is a delay of approximately one and half year, which is not to be condoned. He submitted that the respondent/State has not filed Appeal challenging the said order. He further submitted that the Court has to appreciate the Law of Limitation wherein unexplained delay cannot be condoned so that the litigation has to be put to an end. In support of his submissions, the learned counsel has relied on following judgments:

- (i) Judgment of Supreme Court in the case of ***Brijesh Kumar & Ors. vs. State of Haryana & Ors.,***

reported in **(2014) 11 SCC 351**.

(ii) Judgment of Division Bench of this Court in the case of ***State of Maharashtra & Ors. vs. Vithu Kalya Govari & Ors.***, reported in **2008 (6) Mh. L.J. 239**.

He has further argued that respondent no. 1 is a student of medicine and she is 20 years old. The amount of Rs.85,00,000/- in her account is needed for her education. The trial Court has considered this aspect and has allowed her application.

5. Learned Spl. P.P. for respondent no. 2/State has submitted that they are supporting the applicant and delay be condoned, as M.P.I.D. is a special enactment to protect the interest of the people to curb the unscrupulous activities of financial establishments, which are in default in returning the deposits of a common man. Learned Spl. PP has submitted that the State is in the process of completing formalities of filing Appeal and has relied on the affidavit filed by K. Suryakrishnamurthy, Deputy Collector and Competent Authority (NSEL), Mumbai supporting the application of condonation of delay.

6. We have heard the submissions and considered the ratio laid down in the judgments cited above. In both the judgments cited above, the Applications for condonation of delay were filed

and were rejected for want of showing sufficient cause in cases under Land Acquisition Act. In the case of **Brijesh Kumar & Ors.** (*supra*), an Appeal along with Application for condonation of delay of more than 10 years was filed under the Land Acquisition Act. The period of delay of 10 years was quite a long period and in the present case, there is a delay of one year and 5 months.

7. In the case of **State of Maharashtra vs. Vithu Kalya Govari** (*supra*), the appeals were preferred by the State of Maharashtra against the judgment and award of the Reference Court. There is a delay of 2 years and 2 months in filing the appeal. The Division Bench of this Court has held that if the delay merely has caused due to official hassle and approval at different levels, it can hardly be justified. Filing appeal in a mechanical manner beyond the period of limitation has become a rule, so Division Bench by applying the doctrine of public accountability refused to condone delay.

8. Thus, though it is true that the Law of Limitation is enacted to put end to the litigation and life span of the legal matters is to be specific, however, by enacting Section 5 of the Limitation Act, the legislature has considered the unavoidable and

compelling circumstances which may occur, making it difficult for a common man to approach the Appellate Court and therefore, he should not be rendered remediless. Thus, if satisfactory explanation is furnished by the party, then it can be accepted by the Court, which many times is left to the judicial conscience and depending on the nature and seriousness of the matter.

9. In the present case, the involvement of 13000 investors are at stake. The applicant is an informant and he has been pursuing many matters. In view of the submissions made by the learned counsel for the applicant and after taking into account the magnitude of the matter, we are of the view that sufficient cause is certainly made out. Moreover, the State has also taken a positive stand in favour of the applicant and hence, the delay is condoned.

10. Application is allowed and is disposed of accordingly.

11. Registry to register the Appeal. List the Appeal for hearing on 17th October, 2018.

(MRIDULA BHATKAR, J.)

(S.S. SHINDE, J.)