

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL APPLICATION ST. NO.22023 OF 2017
IN
REVIEW PETITION ST NO.22016 OF 2017
IN
WRIT PETITION NO. 3226 OF 2005**

The Union of India & Ors

..Applicants

Vs.

B. B. Shirsat

..Respondent

**Mrs. Shehnaz (Sheroo) Vispy Barucha (Daruwalla) for the Applicant
Mr. P. M. Jadhav for the Respondent**

**CORAM : R. M. SAVANT, &
A. S. GADKARI, JJ
DATE : 3rd MAY , 2018**

(IN CHAMBER AT 2.45PM.)

P.C.

1 The above Civil Application has been filed seeking condonation of delay of 169 days in filing the above Review Petition. The review is sought of the judgment and order dated 15-2-2017 passed by a Division Bench of this Court to which one of us A. S.Gadkari J. was a party. In terms of the extant arrangement the above Review Petition is placed before this Court for hearing.

2 The delay of 169 days is sought to be justified by the averments made in the above Civil Application and especially in paragraph 4 thereof. The sum and substance of the reasons given is that some time was lost in arriving

at a decision to file a Review Petition as the file had to be moved from one office to another.

3 An Affidavit in Reply has been filed on behalf of the Respondent questioning the case as set out in the above Civil Application.

4 The Learned Counsel appearing on behalf of the Review Petitioner Mrs. Bharucha would urge contentions in support of her case for seeking condonation of delay, and would contend that this Court having regard to the reasons mentioned in the above Civil Application and especially in paragraph 4 thereof should exercise discretion in favour of the Review Petitioner.

5 The Learned Counsel for the Respondent would also reiterate the case of the Respondent as set out in the Affidavit. It was the contention of the Learned Counsel appearing for the Respondent that the delay on account of the procedure that is required to be followed cannot be accepted as the Government is expected to be a model litigant and has to act diligently in the matter of filing a proceeding.

6 Having heard the Learned Counsel for the parties, we are of the view that case for exercise of discretion in favour of the Review Petitioner in the matter of condonation of delay is made out. The delay as indicated above

is of 169 days. In so far as the Central Government is concerned, some indulgence would have to be shown on account of the procedure that is required to be followed prior to arriving at a decision to file a proceeding. If considered in the said context the averments made in paragraph 4 constitute sufficient cause for condonation of delay of 169 days. In so far as the judgments in the matter of **Postmaster General & Ors. Vs. Living Media India Limited & Anr.**¹ relied upon by the Learned Counsel for the Respondent is concerned, it is required to be noted that the said judgment revolves around the facts involved in the said case and the inordinate delay of 427 days which was concerned in the said case. In the said judgment cited on behalf of the Respondent the judgment in the matter of **Collector (LA) Vs. Katiji**² has been referred to the said judgment expositis that in the matter of condonation of delay a highly pedantic and technical approach should be eschewed and an approach which furthers the cause of substantial justice should be adopted. In our view therefore the above Civil Application is required to be allowed and is accordingly allowed in terms of prayer clause (a).

7 The above Civil Application is accordingly disposed of.

8 List the above Review Petition along with Civil Application st
No.22017 of 2017 on 28-6-2018 at 2.45 p.m. in Chamber.

(A. S. GADKARI, J)

(R.M.SAVANT, J)

¹ (2012)3 SCC 563

² (1987)2 SCC 107