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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

925 CIVIL APPLICATION NO.4757 OF 2019
IN SAST/1936/2019

SABERABEE ABDUL GANI QURESHI AND OTHERS
VERSUS

PYARIBEE KHUTEJABEE MAHEMOODMIYA QURESHI AND OTHERS

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Advocate for Applicants : Shri Deshpande Dhananjay P.

Advocate for Respondent nos.1 to 3 : Shri Abdul Aziz

CORAM: V.L. ACHLIYA, J.

DATE: 02.08.2019

PER COURT :

1] The applicants have moved this application for condonation of 91 days delay in filing second appeal.

2] Heard learned counsel for the parties.

3] In brief, it is the contention of learned counsel for the applicants that the delay caused in filing appeal was not deliberate and intentional. It is submitted that the applicant no.1 is an old aged lady of 76 years. The applicant no.2 being in business had to travel from place to place. The applicant no.2 who used to look after the litigation, due to his work could not prefer appeal in time. It is submitted that the

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applicants / appellants have good case to succeed on merit. In case delay is not condoned, there is every likelihood that meritorious matter may be rejected for technical reason. It is further submitted that the prejudice if any caused on account of delay in filing can be compensated in terms of amount.

4] On the other hand, the respondents have opposed the application with contention that the cause assigned cannot be treated as sufficient cause within the meaning of Section 5 of the Limitation Act to condone delay. It is submitted that the delay in fact is much more than 91 days as stated in the application. It is further submitted that there is no on merit to be considered in appeal. It is further submitted that there are concurrent decisions rendered by the Courts below and the appellants have no cause to succeed on merit. The learned counsel submits that the reasons assigned for condonation of delay are false and concocted. In support of the submissions that the cause assigned cannot be treated as sufficient cause, the learned counsel has referred and relied upon decision of this Court in the case of *Vithal Dharmaji Potalwad & others v. Akrambee*

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Abdul Raheman, died, through L.Rs. & others reported in [2014 (6) BOM.C.R. 23].

5] I have carefully considered the submissions advanced in the light of cause assigned for condonation of delay and the broad principles to be borne in mind while dealing with application seeking condonation of delay. The Apex Court in the case of *Esha Bhattacharjee v. Managing Committee of Raghunathpur Nafar Academy and others* [(2013) 12 SCC 649], after taking survey of previous judgments of the Apex Court on the issue of condonation of delay has laid down broad principles / guidelines for the Courts of law to deal with an application seeking condonation of delay. By and large, it is well settled that while dealing with an application seeking condonation of delay, the Court must adopt liberal and practical approach. The Court must ensure that meritorious matter may not be rejected for technical reason. Keeping in mind the broad principles and the guidelines laid down by the Apex Court in the case of *Esha Bhattacharjee v. Managing Committee of Raghunathpur Nafar Academy and others*, I am of the view that the delay deserves to be condoned. So far as merit of the matter

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is concerned, the same can be duly considered at the time of admission of the appeal. I am, therefore, inclined to allow the application.

6] The application is allowed subject to payment of costs of Rs.10,000/- (rupees ten thousand only) to be payable by the applicants to respondents. Payment of costs shall be condition precedent for condonation of delay and registration of appeal. The costs be deposited within two weeks from the date of this order. On deposit of costs, the appeal be registered. Failure to deposit costs within two weeks, the order of condonation of delay shall stand automatically recalled.

7] The application is disposed of in above terms.

(V.L. ACHLIYA, J.)