

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

927 CIVIL APPLICATION NO.4368 OF 2019
IN SAST/3971/2018

THE MAHARASHTRA STATE ELECTRICITY
DISTRIBUTION CO. LTD.

VERSUS

M/S TOSHNIWAL OIL INDUSTRIES THRO. PARTNER-
ARUN RAMGOPAL TOSHNIWAL

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Mr.A.R. Salve, Advocate for the applicant.

Mr.S.S. Rathi, Advocate for respondent.

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CORAM: V.L. ACHLIYA,J.

DATE : 11.10.2019

ORAL ORDER:

This application is filed seeking condonation of 189 days delay in filing the appeal for the reasons set out in the application.

2. Heard learned counsel for the applicant and learned counsel for the respondent.

3. In brief, it is the contention of learned counsel for the applicant that the delay caused in filing appeal was not deliberate and intentional but caused mainly for the reason that considerable time was spent in securing the approval from the

Competent Authority to file appeal. It is submitted that the decision in the case was conveyed to the Zonal/Regional Authority having office at Nanded. Thereafter, the proposal was routed for securing sanction from the Central office of the applicant located at Mumbai. In the process 189 days delay has been caused in filing appeal. It is submitted that the applicant has good case to succeed in appeal. In case the delay is not condoned, there is every likelihood that the meritorious matter may be rejected for technical reason.

4. On the other hand learned counsel for the respondent opposed the application with contention that the reasons assigned cannot be treated as a cause sufficient to condone the delay. It is submitted that it is the procedural delay cannot be accepted as cause sufficient to condone the delay. It is submitted that no distinction can be made between the private individual and the Government in the matter of condonation of delay. It is further submitted that there are concurrent decisions rendered by the Courts below in favour of the respondent and there is no merit in the appeal filed by the

applicant/appellant.

5. On due consideration of submissions advanced in the light of unchallenged and uncontroverted cause assigned for condonation of delay, I am of the view, the delay deserves to be condoned. No doubt the cause assigned for condonation of delay reflects casual attitude on the part of the officials in processing the proposal for filing appeal. However, the reason assigned for condoning the delay cannot be treated as false, concocted and suffers from malafides. In the case of **Esha Bhattacharjee V/s Raghunathpur Nafar Academy** reported in (2013)12 SCC 649, the Apex Court after taking survey of various decisions given in the matter of condonation of delay by the Apex Court has culled out the principles that can be broadly followed in the matter of condonation of delay. It has been held that there should be a liberal, pragmatic, justice-oriented, non-pedantic approach while dealing with an application for condonation of delay. The term "sufficient cause" should be understood in their proper spirit, philosophy and same to be basically considered as elastic and to be applied in proper perspective in the given

facts and situation. While condoning the delay substantial justice being paramount and pivotal the technical considerations should not be given undue emphasis. So also no presumption to be attached to deliberate causation of delay. It is also observed that the State or Public body or entity representing collective cause should be given some acceptable latitude. Thus, in the background of overall facts of the case and the cause assigned, I am of the view, the delay deserves to be condoned. The condonation of delay in filing appeal would not cause any serious prejudice to the respondent. The prejudice caused to the respondent can be compensated in terms of money. On the contrary, if the delay is not condoned, there is every likelihood that the meritorious matter may be rejected for technical reason. I am therefore inclined to allow the application seeking condonation of delay subject to costs of Rs.10,000/- to be payable by the applicant to the respondent. The amount of costs be paid within four weeks from the date of this order. On deposit of costs, the appeal be registered and placed for admission on 18th November, 2019, subject to removal of office objections. Failure to

deposit costs within four weeks from today, the order condoning the delay stands recalled and the application be treated as dismissed unless time is extended.

6. The applicant is granted liberty to recover the costs from the Officers primarily responsible for causing delay in filing appeal.

7. Civil Application is disposed of in above terms.

[V.L. ACHLIYA]
JUDGE

SGA