

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 5070 OF 2018

SUBHASH NEMICHAND BORA
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

Advocate for Petitioner : Mr. V.B. Patil.
AGP for Respondent Nos. 1 & 2 : Mr. S.W. Munde.
Advocate for Respondent No. 3 : Mr. P.S. Gaikwad.

CORAM : RAVINDRA V. GHUGE, J.
Dated : 03.04.2019

PER COURT :

1. The petitioner is aggrieved by the impugned order delivered by the Divisional Joint Registrar Co-operative Societies, Nashik, dated 27.09.2017, by which, the said authority has declined to condone the delay of 03 years, 11 months and 20 days in filing an appeal under Section 152 of the Maharashtra Co-Operative Societies Act.
2. I have heard the learned advocates for the respective sides and the learned AGP on behalf of respondent Nos. 1 and 2.
3. The limitation period for filing an Appeal under Section 152 is of 60 days. Section 153 of the Act provides for condonation of delay, if a sufficient and good ground is made out. The petitioner has preferred his application dated 05.04.2017, for seeking condonation of delay of 03 years, 11 months and 20 days in challenging the

enquiry report under Section 88 of the Maharashtra Co-Operative Societies Act, 1960, (Act of 1960) dated 15.05.2013.

4. The petitioner has set out a solitary ground in his application for condonation of delay. He submits that he was served with a charge-sheet under the service conditions for initiating a departmental enquiry with regard to the allegations of misappropriation while being a Cashier in the respondent No. 3/Bank. He challenged the charge-sheet vide Complaint (ULP) No. 47/2007, under the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971, (Act of 1971) before the Industrial Court at Jalgaon. By judgment dated 14.03.2013, the complaint was allowed and the charge-sheet was quashed and set aside. This is a subject matter of litigation in a Writ Petition filed by the Bank, which is pending before this Court.

5. It is undisputed that the enquiry report under Section 88 has been filed on 15.05.2013, which is after two months from the judgment of the Industrial Court. The petitioner has, therefore, contended that he was under the impression that he needs to do nothing about the enquiry dated 15.05.2013, and therefore, he kept silent for almost four years.

6. Learned advocate for the Bank submits that the petitioner should have stated in his application, as to what is the event that has triggered a reaction prompting him to file an Appeal under Section 152. If he kept silent for four years, he must set out the event that made him realize that he has to prefer an Appeal under Section 152. In the absence of any pleadings, the competent authority has rightly rejected the application for condonation of delay.

7. Learned advocate for the Bank relies upon the judgment of the Hon'ble Supreme Court in the matter of Balwant Singh (Dead) Vs. Jagdish Singh and others [2010 AIR SC 3043], in which the Hon'ble Apex Court has concluded in paragraph No. 13 as under :

“13. As held by this Court in the case of Mithailal Dalsangar Singh (supra), the abatement results in the denial of hearing on the merits of the case, the provision of abatement has to be construed strictly. On the other hand, the prayer for setting aside an abatement and the dismissal consequent upon an abatement, have to be construed liberally. We may state that even if the term 'sufficient cause' has to receive liberal construction, it must squarely fall within the concept of reasonable time and proper conduct of the concerned party. The purpose of introducing liberal construction normally is to introduce the concept of 'reasonableness' as it is understood in its general connotation. The law of limitation is a substantive law and has definite consequences on the right and obligation of a party to arise. These principles should be adhered to and

applied appropriately depending on the facts and circumstances of a given case. Once a valuable right, as accrued in favour of one party as a result of the failure of the other party to explain the delay by showing sufficient cause and its own conduct, it will be unreasonable to take away that right on the mere asking of the applicant, particularly when the delay is directly a result of negligence, default or inaction of that party. Justice must be done to both parties equally. Then alone the ends of justice can be achieved. If a party has been thoroughly negligent in implementing its rights and remedies, it will be equally unfair to deprive the other party of a valuable right that has accrued to it in law as a result of his acting vigilantly. The application filed by the applicants lack in details. Even the averments made are not correct and ex-facie lack bona fide. The explanation has to be reasonable or plausible, so as to persuade the Court to believe that the explanation rendered is not only true, but is worthy of exercising judicial discretion in favour of the applicant. If it does not specify any of the enunciated ingredients of judicial pronouncements, then the application should be dismissed. On the other hand, if the application is bona fide and based upon true and plausible explanations, as well as reflect normal behaviour of a common prudent person on the part of the applicant, the Court would normally tilt the judicial discretion in favour of such an applicant. Liberal construction cannot be equated with doing injustice to the other party. In the case of [State of Bihar v. Kameshwar Prasad Singh](#) [(2000) 9 SCC 94], this Court had taken a liberal approach for condoning the delay in cases of the Government, to do substantial justice. Facts of that case

were entirely different as that was the case of fixation of seniority of 400 officers and the facts were required to be verified. But what we are impressing upon is that delay should be condoned to do substantial justice without resulting in injustice to the other party. This balance has to be kept in mind by the Court while deciding such applications. In the case of [Ramlal and Others v. Rewa Coalfields Ltd.](#), [AIR 1962 SC 361] this Court took the view:

"7. In construing [Section 5](#) it is relevant to bear in mind two important considerations. The first consideration is that the expiration of the period of limitation prescribed for making an appeal gives rise to a right in favour of the decree holder to treat the decree as binding between the parties. In other words, when the period of limitation prescribed has expired the decree-holder has obtained a benefit under the law of limitation to treat the decree as beyond challenge, and this legal right which has accrued to the decree holder by lapse of time should not be lightly disturbed. The other consideration which cannot be ignored is that if sufficient cause for excusing delay is shown discretion is given to the Court to condone delay and admit the appeal. This discretion has been deliberately conferred on the Court in order that judicial power and discretion in that behalf should be exercised to advance substantial justice. As has been observed by the Madras High Court in *Krishna v. Chathappan*, ILR 13 Mad 269.

It is however, necessary to emphasize that even after sufficient cause has been shown a party is not entitled to the condonation of delay in question as a matter of right. The

proof of a sufficient cause is a condition precedent for the exercise of the discretionary jurisdiction vested in the court by [Section 5](#). If sufficient cause is not proved nothing further has to be done; the application for condoning delay has to be dismissed on that ground alone. If sufficient cause is shown then the Court has to enquire whether in its discretion it should condone the delay. This aspect of the matter naturally introduces the consideration of all relevant facts and it is at this stage that diligence of the party or its bona fides may fall for consideration;..." "

8. Learned counsel for the petitioner submits that with reference to the same enquiry report dated 15.05.2013, under Section 88, one Shri Ramesh Champalal Jain, who is one of the persons along with the petitioner and on whom the responsibility has been cast as regards the misappropriation and recovery of an amount of Rs. 9,65,17,543/- (the amount to the extent of Shri Jain, being Rs. 8,92,51,198/-), the competent authority under Section 152 has quashed the report. He, therefore, submits that he has a good case since he is only an employee of the Bank and cannot be covered under the enquiry under Section 88. Learned advocate for the Bank hastens to add that the said order is subject matter of challenge before this Court.

9. In the above circumstances, it appears that laches or ulterior

motives have not been attributed to the conduct of the petitioner. Though the delay is about 03 years, 11 months and 20 days, the same cannot be termed as being an inordinate delay. The Hon'ble Apex Court in the matter of Collector, Land Acquisition Anantnag and another Vs. Mst. Katiji and others [(1987) 2 SCC 107], has observed in paragraph No. 3 as under :

"1. Ordinarily a litigant does not stand to benefit by lodging an appeal late.

2. Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this when delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties.

3. "Every day's delay must be explained" does not mean that a pedantic approach should be made. Why not every hour's delay, every second's delay? The doctrine must be applied in a rational common sense pragmatic manner.

4. When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay.

5. There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala fides. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk.

6. It must be grasped that judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so.”

10. The fact situation before this Court, therefore, is that on the one hand, the petitioner being an employee of the Bank, may not be covered under Section 88 of the MCS Act and on the other hand, the doors of litigation would be closed on him, if the delay is not condoned and he would have to pay an amount of Rs. 12 lakhs approximately as on date, the amount being Rs. 6,31,318/- on 15.05.2013.

11. Learned advocate for the petitioner submits, on instructions from his client who is present in the Court that he is willing to deposit costs of Rs. 10,000/- directly with the Bank within four weeks from today, towards the delay caused. Though the learned advocate for the Bank does not desire to react to this statement, I find that if the delay is not condoned, the petitioner, who was a cashier, will have to suffer an irreparable harm and grave prejudice.

12. It is in the above facts and circumstances of the case, that this petition is allowed. The impugned order dated 27.09.2017, is quashed and set aside on the condition that the petitioner shall deposit an amount of Rs. 10,000/- on/or before 06.05.2019, before the Divisional Joint Registrar, Co-Operative Societies, Nashik. On this Condition, his Appeal shall be registered by the Divisional Joint Registrar, Co-Operative Societies, Nashik, on 07.05.2019. The litigating sides would appear before the concerned authority on 07.05.2019. The respondent/Bank can then withdraw the amount unconditionally. Needless to state, if the amount is not deposited, this order shall stand recalled and the impugned order shall stand restored on 07.05.2019.

13. All the contentions of the litigating sides are kept open and the concerned authority would decide the Appeal on its own merits, without being impressed by any observations made by this Court in this order.

(RAVINDRA V. GHUGE, J.)