

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO.499 OF 2019

M/s Vikrant Developers,
Through sole Proprietor,
Shri Sanjay Bhagwandas Patil,
Occu. Business,
R/o 1st Floor, Parasmani Bhawan,
Lokmanya Tilak Chowk,
Dombivali (E), 421 201

.. Petitioner

Versus

1. Rajendra s/o Rajaram Basaiye,
Age 50 years, Occu. Business,
R/o Kesar Sadan, Gulmandi,
Aurangabad

2. State of Maharashtra

.. Respondents

Mrs R.S. Kulkarni, Advocate for petitioner
Mr A.T. Kanawade, Advocate for respondent no.1
Mr S.W. Mundhe, A.P.P. for respondent no.2

CORAM : V.L. ACHLIYA, J.

DATE : 05.08.2019

ORAL JUDGMENT :

1. Rule. Rule returnable forthwith. By consent of learned Counsel for the parties, heard finally.

2. In view of limited challenge raised in the petition confined to order dated 6.3.2019 passed by Additional Sessions Judge, Aurangabad in Criminal Misc. Application No.369 of 2018, to reject the application for condonation of 90 days delay in filing revision petition, it is not necessary to discuss the facts in detail.

3. By referring the chequered history of the case, as mentioned in the petition, the learned Counsel for the petitioner submits that the delay caused in filing revision petition was neither deliberate nor

intentional. It is submitted that the petitioner was prosecuting the S.L.P. bearing Diary No.34265/2018 against the order dated 25.8.2015 passed by this Court in Criminal Application No.901 of 2015 and 900 of 2015. The said S.L.P. was dismissed on 8.10.2018. Pursuant to the order dated 25.8.2015 passed by this Court to set aside the order dated 13.9.2013 passed by the trial Court and remanding the case to learned Judicial Magistrate, First Class, Aurangabad, the trial Court has again passed the order of issuance of process vide order dated 24.11.2017 in S.C.C. No.6450/2010. After dismissal of S.L.P. by the Apex Court and re-issuance of summons, the petitioner preferred revision before the Sessions Court, Aurangabad as against order dated 24.11.2017. In filing revision petition, there was delay of 90 days. The learned Additional Sessions Judge, Aurangabad rejected the application seeking condonation of delay. While passing the order, the learned Additional Sessions Judge also made observation as to merit of the revision petition. It is contended that the order has been passed against the settled principles of law. It is submitted that Apex Court has time and again ruled that while considering the application for condonation of delay, the Court must adopt liberal, pragmatic, justice oriented and non-pedantic approach. It is further submitted that the "sufficient cause" as referred in Section 5 of the Limitation Act to be understood in proper spirit, philosophy. The said terms are basically elastic and are to be applied in proper perspective. In support of submissions advanced, the learned Counsel has referred and relied to the decision of the Apex Court in the case of **State of Nagaland Vs. Lipok AO and ors.**, reported in **(2005) 3 SCC 752** and **Esha Bhattacharjee Vs. Managing Committee of**

Raghunathpur Nafar Academy and ors., reported in **(2013) 12 SCC 649**. It is further submitted that the order passed by Sessions Court is cryptic and not sustainable in law.

4. On the other hand, the learned Counsel for respondent supported the order and submitted that the cause assigned for condonation of delay cannot be treated as sufficient to condone the delay of 90 days and supported the order passed by Sessions Court.

5. I have carefully considered the submissions advanced in the light of the facts of the case, the cause assigned for condonation of delay and order passed by revisional Court. In my view, the delay caused in filing the revision petition was not deliberate and intentional. It was due to the reason that S.L.P. was pending before the Apex Court, which was decided on 8.10.2018. The petitioner has assigned sufficient cause to condone the delay. The order passed is against the settled principles and guidelines laid down in the matter of condonation of delay.

6. The trial Court has passed the order to issue process after the case was remanded by the High Court without notice to the petitioner. In this background, the contention of the petitioner that delay was not deliberate and intentional deserves to be accepted. If delay is not condoned, there is every likelihood that serious prejudice may cause to petitioner. The Apex Court in the case of **Esha Bhattacharjee Vs. Managing Committee of Raghunathpur Nafar Academy and ors.**, reported in **(2013) 12 SCC 649**, has held as under :-

“ While considering the application for condonation of delay, the Court must adopt liberal, pragmatic, justice oriented, non-pedantic approach. “The terms “sufficient cause” should be understood in their proper spirit, philosophy and purpose regard being had to the fact that these terms are basically elastic and are to be applied in proper perspective to the obtaining fact-situation.”

7. Hence, on due consideration of overall facts and circumstances of the case, I am of the view that the order passed by the revisional Court is not sustainable. The impuned order is against the settled principles laid down by the Apex Court in the case of Easha Bhattacharjee (supra). In case the delay is condoned no prejudice would be caused to the respondents as ultimately, the revision petition will be decided on merit.

8. In view of above, the petition deserves to be allowed and the impugned order is liable to be set aside. Accordingly, the petition is allowed in terms of prayer clause (A) with no order as to costs. The application filed by the petitioner seeking condonation of delay in filing revision petition is allowed. The revision petition be numbered and placed for hearing on 3rd September 2019. Parties are directed to approach the revisional Court on 3rd September 2019. No fresh notice to the parties. The revisional Court is directed to decide the revision petition as expeditiously as possible and preferably within three months from the date of appearance of

the parties. Interim order operating in the matter to remain in force till 3rd September 2019.

9. Rule made absolute in above terms.

(V.L. ACHLIYA)
JUDGE

vvr