

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

WRIT PETITION NO.15102 OF 2019

THE GENERAL MANAGER NIRMAL SEEDS PVT LTD
VERSUS
ANANDSING CHINDHA JADHAV

...

Advocate for the Petitioner : Shri Patil Sandesh R.

...

**CORAM: RAVINDRA V. GHUGE, J.
DATE :- 16th December, 2019**

Per Court:

1 The petitioner/ management, who is the respondent in Revision (ULP) No.22/2017 and in Miscellaneous Application (ULP) No.15/2017, is aggrieved by the judgment and order delivered by the Industrial Court dated 19.11.2018 vide which, it has allowed the revision ULP filed by the respondent/ worker and has condoned the delay of two months caused in filing the ULP complaint.

2 The learned advocate for the petitioner/ management has strenuously criticized the impugned judgment by relying upon the seven grounds formulated in the memo of the petition. He submits that the Labour Court has rightly rejected the application for condonation of delay vide its judgment dated 07.09.2007. The Industrial Court, in its limited supervisory jurisdiction under Section 44 of the MRTU & PULP Act, 1971, should not have interfered with the findings of the Labour Court.

3 I find that the MRTU & PULP Act, 1971 permits an employee to file an ULP complaint under Section 28(1) within a period of 90 days from the date of the cause of action. Under the Labour Court (Practice and Procedure) Rules, 1975, Rule 61 permits an employee or an aggrieved party to file a complaint beyond 90 days by filing a separate application for condonation of delay with a supporting affidavit. The original complainant/ workman has moved such an application seeking condonation of two months delay caused in filing of the complaint. There is no dispute that the Labour Court can consider the reasons assigned and condone the delay, if it finds that it would be equitable to do so. In the instant case, the Labour Court has declined to condone the delay of two months and four days on the ground that the complainant was aware that he has been terminated and therefore, heavy burden lay on the shoulder of the worker to prove that the delay of two months deserves to be condoned.

4 The Industrial Court has concluded vide the impugned judgment that since condonation of delay has to be considered pragmatically, it did not find that the delay was deliberate or inordinate.

5 The Honourable Supreme Court, in ***Collector, Land Acquisition, Anantnag v/s Mst.Katiji, AIR 1987 SC 1353***, while considering the philosophy behind the condonation of delay and its effects, has observed in paragraph 3 as under:-

“3. The legislature has conferred the power to condone delay by enacting Section 51 of the Indian Limitation Act of 1963 in order to enable the Courts to do substantial justice to parties by disposing of matters on merits. The expression "sufficient cause" employed by the legislature is adequately elastic to enable the courts to apply the law in a meaningful manner which subserves the ends of justice that being the life-purpose for the existence of the institution of Courts. It is common knowledge that this Court has been making a justifiably liberal approach in matters instituted in this Court. But the message does not appear to have percolated down to all the other Courts in the hierarchy. And such a liberal approach is adopted on principle as it is realized that:-

"Any appeal or any application, other than an application under any of the provisions of Order XXI of the Code of Civil Procedure, 1908 may be admitted after the prescribed period if the appellant or the applicant satisfies the court that he had sufficient cause for not preferring the appeal or making the application within such period."

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.*

Making a justice-oriented approach from this perspective, there was sufficient cause for condoning the delay in the institution of the appeal. The fact that it was the State which was seeking condonation and not a private party was altogether irrelevant. The doctrine of equality before law demands that all litigants, including the State as a litigant, are accorded the same treatment and the law is administered in an even handed manner. There is no warrant for according a stepmotherly treatment when the State is the applicant praying for condonation of delay. In fact experience shows that on account of an impersonal machinery (no one in charge of the matter is directly hit or hurt by the judgment sought to be subjected to appeal) and the inherited bureaucratic methodology imbued with the note-making, file pushing, and passing-on-the-buck ethos, delay on its part is less difficult to understand though more difficult to approve. In any event, the State which represents the collective cause of the community, does not deserve a litigant-non-grata status. The Courts therefore have to be informed with the spirit and philosophy of the provision in the course of the interpretation of the expression "sufficient cause". So also the same approach has to be evidenced in its application to matters at hand with the end in view to do even-handed justice on merits in preference to the approach which scuttles a decision on merits. Turning to the facts of the matter giving rise to the present appeal, we are satisfied that sufficient cause exists for the delay. The order of the High Court dismissing the appeal before it as time barred, is therefore, set aside. Delay is condoned. And the matter is remitted to the

High Court. The High Court will now dispose of the appeal on merits after affording reasonable opportunity of hearing to both the sides.”

6 The Honourable Supreme Court has delivered a judgment in the matter of *Esha Bhattacharjee v/s Managing Committee of Raghunathpur Nafar Academy, (2013) 12 SCC 649* wherein, it has culled out certain principles while considering whether, delay should be condoned.

7 In my view, if delay is not deliberate or inordinate and laches are not attributable to the conduct of the applicant, the Court should adopt a pragmatic view rather than following a pedantic approach. Every day's delay is not required to be explained. If delay is too large and appears to be inordinate, the Court may take a different view. In the instant case, laches or malafides have not been attributed to the conduct of the complainant, inasmuch as, he would not benefit from causing delay in his own matter. Delay does not appear to be deliberate.

8 Considering the above, the view taken by the Industrial Court is just, fair, proper and pragmatic and I find that the view taken by the Labour Court was pedantic.

9 This Writ Petition, being devoid of merit is, therefore, dismissed.