

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

31. CIVIL APPLICATION NO.11635 OF 2015

IN FAST/23954/2015

WITH CA/11655/2015 IN FAST/24027/2015

WITH CA/11672/2015 IN FAST/24015/2015

WITH CA/11641/2015 IN FAST/24002/2015

WITH CA/11662/2015 IN FAST/24036/2015

WITH CA/11653/2015 IN FAST/24018/2015

WITH CA/11648/2015 IN FAST/23993/2015

WITH CA/11637/2015 IN FAST/23996/2015

WITH CA/11639/2015 IN FAST/23999/2015

WITH CA/11643/2015 IN FAST/24005/2015

WITH CA/11646/2015 IN FAST/23990/2015

WITH CA/11651/2015 IN FAST/24012/2015

WITH CA/11658/2015 IN FAST/24030/2015

WITH CA/11660/2015 IN FAST/24033/2015

WITH CA/11664/2015 IN FAST/24039/2015

WITH CA/11666/2015 IN FAST/24045/2015

WITH CA/11668/2015 IN FAST/24048/2015

WITH CA/11670/2015 IN FAST/24009/2015

WITH CA/11674/2015 IN FAST/24021/2015

WITH CA/11676/2015 IN FAST/24024/2015

WITH CA/11678/2015 IN FAST/24042/2015

THE EXECUTIVE ENGINEER,
MINOR IRRIGATION DIVN BEED AND OTHERS
VERSUS
LAXMAN RAOSAHEB CHORE AND ANOTHER

Mr. S.C. Arora, Advocate for applicants

Mr. P.M. Kulkarni, Asstt. Govt. Pleader for co-applicants.

Mr. D.A. Bide & Mr. S.R. Shirsat, Advocates for respondents

CORAM : V.L. ACHLIYA, J.

DATE : 15th April, 2019

PER COURT :

1. All these applications are filed seeking condonation of 280 days' delay in filing appeals by the appellant-applicant i.e. acquiring body for the reasons set out in detail in respective applications.

2. Heard learned Counsel for the applicant-appellant, the Advocate representing respondents-claimants and Asstt. Govt. Pleader appearing in respective applications.

3. In brief it is contention of the learned Counsel for the applicant that the delay in filing appeals is occurred on account of much time spent in obtaining certified copies, securing legal opinion and approval from competent authority as well as arranging funds to deposit court fees and then to file appeals. Learned Counsel submits that the delay caused in filing appeals was not deliberate and deserves to be condoned in larger interest. The appellants have good case to succeed in appeal. It is submitted that in case delay is

condoned, no serious prejudice would cause to respondents as ultimately the appeals will be decided on merit. On other hand, if delay is not condoned, there is every likelihood that meritorious matter may be rejected for technical reasons.

4. On the other hand, learned Counsel for respondents opposed the application with contention that no sufficient cause has been assigned to condone the delay.

5. In the case of ***Esha Bhattacharjee V/s Managing Committee of Raghunathpur Nafar Academy and others*** reported in ***(2013)12 S.C.C. 649***, the Hon'ble Supreme Court culled out the following principles to be followed while dealing with an application for condonation of delay :

“21. From the aforesaid authorities the principles that can broadly be culled out are:

21.1. (i) There should be a liberal, pragmatic, justice-oriented, non-pedantic approach while dealing with an application for condonation of delay, for the courts are not supposed to legalise injustice but are obliged to remove injustice.

21.2 (ii) 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.

21.3. (iii) Substantial justice being paramount and pivotal the technical considerations should not be given undue and uncalled for emphasis.

21.4.(iv) No presumption can be attached to deliberate causation of delay but, gross negligence on the part of the counsel or litigant is to be taken note of.

21.5. (v) Lack of bona fides imputable to a party seeking condonation of delay is a significant and relevant fact.

21.6(vi) It is to be kept in mind that adherence to strict proof should not affect public justice and cause public mischief because the courts are required to be vigilant so that in the ultimate eventuate there is no real failure of justice.

21.7. (vii) The concept of liberal approach has to encapsulate the conception of reasonableness and it cannot be allowed a totally unfettered free play.

21.8 (viii) There is a distinction between inordinate delay and a delay of short duration or few days, for to the former doctrine of prejudice is attracted whereas to the latter it may not be attracted. That apart, the first one warrants strict approach whereas the second calls for a liberal delineation.

21.9 (ix) The conduct, behaviour and attitude of a party relating to its inaction or negligence are relevant factors to be taken into consideration. It is so as the fundamental principle is that the courts are required to weigh the scale of balance of justice in respect of both parties and the said principle cannot be given a total go by in the name of liberal approach.

21.10. (x) If the explanation offered is concocted or the grounds urged in the application are fanciful, the courts should be vigilant not to expose the other side unnecessarily to face such a litigation.

21.11. (xi) It is to be borne in mind that no one gets away with fraud, misrepresentation or interpolation by taking recourse to the technicalities of law of limitation.

21.12.(xii) The entire gamut of facts are to be carefully scrutinised and the approach should be based on the paradigm of judicial discretion which is founded on objective reasoning and not on individual perception.

21.13.(xiii) The State or a public body or an entity representing a collective cause should be given some acceptable latitude.

22. To the aforesaid principles we may add some more guidelines taking note of the present day scenario. They are :

22.1. (a) An application for condonation of delay should be drafted with careful concern and not in a haphazard manner harbouring the notion that the courts are required to condone delay on the bedrock of the principle that adjudication of a *lis* on merits is seminal to justice dispensation system.

22.2. (b) An application for condonation of delay should not be dealt with in a routine manner on the base of individual philosophy which is basically subjective.

22.3 (c) Though no precise formula can be laid down regard being had to the concept of judicial discretion, yet a conscious effort for achieving consistency and collegiality of the adjudicatory system should be made as that is the ultimate institutional motto.

22.4 (d) The increasing tendency to perceive delay as a non-serious matter and, hence, lackadaisical propensity can be exhibited in a nonchalant manner requires to be curbed, of course, within legal parameters.

6. Keeping in mind the principles laid down in the case of ***Esha Bhattacharjee*** (supra) and considering the submissions advanced in the light of unchallenged pleadings made in the application, I am of the view that the delay deserves to be condoned. If delay is condoned, no serious prejudice would cause to respondents as at the most the appeals will be decided on merit.

On the contrary, if delay is not condoned there is every likelihood that the meritorious matters may be rejected for technical reasons. Accordingly the applications are allowed in terms of prayer clause (B) in respective applications. Delay is condoned. Appeals be registered and place for admission on 20th June 2019.

7. Mr. Bide, learned Counsel waives service for the respondents-claimants in respective appeals.

8. Call for record and proceedings.

9. Parties are put to notice that appeals may be heard at the stage of admission.

10. The applications be marked as disposed of in above terms.

Stand over to 20th June 2019.

(V.L. ACHLIYA)
JUDGE

Madkar