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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

925 CIVIL APPLICATION NO.7207 OF 2016
IN SECOND APPEAL (ST.) NO.35417/2015

DEVIDAS RAMRAO JADHAV

VERSUS

HARIKANBAI VENKATRAO JADHAV AND OTHERS

...

Advocate for Applicant : Miss.S.R. Avhad h/f Shri Bayas
Anandsing

Advocate for Respondent nos.1 to 3 : Shri S.G. Rudrawar

CORAM: V.L. ACHLIYA, J.

DATE: 02.07.2019

PER COURT :

1] The applicant / appellant has preferred this application seeking condonation of 885 days delay in filing second appeal for the reasons set out in detail in the application.

2] Heard learned counsel for the applicant / appellant and the respondents.

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. It was primarily due to serious illness of his son Vikram who was suffering from cancer. It is the contention of

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learned counsel for the applicant that the son of the applicant, who was residing at Latur, was detected with cancer in the year 2012. He has not disclosed the same to the applicant. The applicant came to know about his ailment in the year 2013. He was undergoing treatment from the year 2012. Initially he was taking treatment at Latur, Osmanabad and Solapur. Since the year 2014, he was undergoing treatment at Kokilaben Dhirubhai Ambani Hospital at Mumbai. He died on 8.12.2016. Due to serious illness of his son, the applicant could not file appeal within time. In support of the submissions, the learned counsel has referred and relied upon copies of reports of medical examination and medical treatment taken in hospitals at Latur, Osmanabad, Solapur and Mumbai. So also the applicant has produced copy of the death certificate of his son. In the background of causes assigned to condone the delay, the learned counsel submits that the delay caused in filing appeal deserves to be condoned. It is submitted that if delay is condoned, no serious prejudice would be caused to the respondents as ultimately the appeal will be decided on its own merits. In support of the submissions, the

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learned counsel has referred and relied upon the decision of the Apex Court in the case of *Collector, Land Acquisition, Anantnag & another v. Mst. Katiji & others* reported in **AIR 1987 SC 1353**.

4] On the other hand, learned counsel for the respondents has opposed the application with contention that the cause assigned is not sufficient to condone the delay of 885 days in filing appeal. So far as contention of the applicant that the son of the applicant was suffering from cancer and undergoing treatment from the year 2012 till his death on 8.12.2016, the learned counsel submits that the averments made in the application are vague and without filing the supporting documents. It is submitted that the applicant is financially sound. He is having dealership of kerosene. So also he runs fertilizers shop. He is also having agricultural land. It is further submitted that the appeal filed is also without merit. No substantial question of law is involved to entertain the appeal. Learned counsel has referred and relied upon the decision of this Court in the case of *Kamalbai Narasaiyya Shrimal & another v. Ganpat Vithal Gavare* reported in **2007 (2)**

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ALL MR 608 and order dated 12.6.2009 passed in **Writ Petition No.6452/2008** by this Court in the case of *Govind Prabhu Yadav v. The Secretary, Khedi and Gramin Vikas Samajik Sanstha & others.*

5] On due consideration of the submissions advanced, I am of the view that the delay deserves to be condoned. The cause assigned by the applicant for condonation of delay is supported by the documentary evidence placed in support of the application. It is evident from the record that the son of the applicant was detected cancer and undergoing treatment for a long time. He died in the month of December, 2016. He was detected cancer in the year 2012. The impugned judgment and decree challenged by way of second appeal was passed on 28.3.2013. The evidence produced in support of the cause assigned to condone the delay supports the case of the applicant that his son was detected cancer in the year 2012 and undergoing treatment. From the year 2014, he was taking treatment at Kokilaben Dhirubhai Ambani Hospital at Mumbai. The facts that the son of the applicant was suffering from cancer and undergoing treatment from 2013-14 as well as his death on 8.12.2016

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are not seriously disputed by respondents. In view of the cause assigned to condone the delay in filing the appeal supported by documents, the delay deserves to be condoned.

6] The learned counsel for the applicant has placed reliance upon the decision of the Apex Court in the case of *Collector, Land Acquisition, Anantnag & another v. Mst.Kajiti & others*, wherein the Apex Court has observed that while interpreting the term "sufficient cause", the Court should adopt liberal and pragmatic approach. In paragraph no.3, the Court has observed 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,

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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."

7] In the case of *Esha Bhattarjee v. Managing Committee of Raghunathpur Nafar Academy & others* reported in (2013) 12 SCC 649, the Apex Court has considered earlier precedents of law and laid down broad principles to be borne in mind while considering the case for condonation of delay. The principles laid down read as under:-

"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.

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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.

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

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.

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

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.

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

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

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liberal delineation.

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.

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.

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.

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

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

8] On due consideration of the cause assigned to condone the delay and overall facts of the case in the

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light of broad principles laid down by the Apex Court in the case of *Esha Bhattacharjee* (supra), I am of the view that the delay deserves to be condoned. In case, delay is not condoned, there is every likelihood that a meritorious matter may be rejected for technical reasons. On the other hand, if delay is condoned, no serious prejudice would be caused to the respondents as ultimately the matter would be decided on its own merits. Whether appeal raises substantial questions of law can be examined at the stage of hearing of appeal for admission. I am, therefore, inclined to allow the application.

9] Accordingly, the application is allowed in terms of prayer clause (B). Delay is condoned. Appeal be registered subject to removal of office objections within two weeks. List the appeal for admission on 1.8.2019.

(V.L. ACHLIYA, J.)