

***IN THE HIGH COURT OF BOMBAY AT GOA******MISC. CIVIL APPLICATION NO. 611 OF 2018  
IN  
STAMP NUMBER MAIN NO. 353 OF 2018***

Shri. Ankush Shankar Naik (deceased)

Represented by his legal heirs

... Applicants

Versus

Mr. Manuel Sebastian D'Souza

& 16 Ors.

... Respondents

Mr. P.P. Singh, Advocate for the Applicants.

Mr. Vithal Naik, Advocate for the Respondent No1.

***Coram : Prithviraj K. Chavan, J.***

***Date : 04<sup>th</sup> July, 2019.***

***P.C. :***

By this application under Section 5 of the Limitation Act, the original Defendants have prayed for condonation of delay of 180 days, which occurred in filing the second appeal. The Applicants/original Defendants suffered a decree in the Courts below, and therefore approached this Court, by way of a second appeal, wherein there is a delay.

2. Heard Shri. P.P. Singh, learned Counsel for the Applicants. The three main grounds in the application which caused the delay are that, the son of the Applicant has died, and therefore, the Applicant could not contact his Advocate for quite sometime. The second reason for the delay, as stated in the application, is that the Advocate, (Mr. Singh) himself fell sick due to heavy lung infection, and was unable to attend office for about two and half months, and could attend office only in the month of November, 2017. Though there is no such specific averment as regards the sickness of the same learned Counsel, nevertheless, a statement is made across the Bar that Mr. Singh was the Counsel representing the Applicants in the trial Court. The third ground raised in the application is that the Applicant himself fell sick, and could not recover from his sickness for about 45 days.

3. It is submitted by Mr. Singh that he has a good case on merits, and therefore the delay needs to be condoned, in support of which he placed reliance on an authority of the Supreme Court in the case of **N. Balakrishnan Vs. M. Krishnamurthy** reported in (1998) 7 SCC 123.

4. Per contra, Mr. Vithal Naik, learned Counsel appearing for the Respondents strongly objected the application for condonation of delay by contending that there is no sufficient cause shown by the Applicants and the conduct of the Applicant is not free from doubt. The application is filed in the most casual manner without indicating the date of death of the son, or even the name of the Advocate who fell sick. If the Advocate for the Applicant was sick, the Applicant could have approached another Advocate. According to the learned Counsel for the Respondents, dehors any medical certificate of the illness of the Advocate and for want of sufficient reasons, the delay may not be condoned as the rights accrued to the Respondents would be jeopardized.

5. After considering the submissions of the respective learned Counsel at the Bar, and after going through the ratio laid down by the Supreme Court in the ruling cited hereinabove, I am inclined to condone the delay for the reasons hereinbelow.

6. It has been the approach of the Courts to have a liberal view while condoning the delay under Section 5 of the Limitation Act, if the Applicant gives sufficient cause and cogent reasons for the delay.

No doubt, it is a matter of discretion to be exercised judicially, yet it is always advisable that the lis should be fought on merits, instead of procedural laches. The Supreme Court in the judgment cited supra, observed, and I quote,

*“ It is axiomatic that condonation of delay is a matter of discretion of the court. Section 5 of the Limitation Act does not say that such discretion can be exercised only if the delay is within a certain limit. Length of delay is no matter, acceptability of the explanation is the only criterion. Sometimes delay of the shortest range may be uncondonable due to want of acceptable explanation whereas in certain other cases delay of very long range can be condoned as the explanation thereof is satisfactory. Once the court accepts the explanation as sufficient, it is the result of positive exercise of discretion and normally the superior court should not disturb such finding, much less in revisional jurisdiction, unless the exercise of discretion was on whole untenable grounds or arbitrary or perverse. But it is a different matter when the first court refuses to condone the delay. In such cases, the superior court would be free to consider the cause shown for the delay afresh and it is open to such superior court to come to its own finding even untrammelled by the conclusion of the lower court.”*

7. In order to get the matter adjudicated on merits between the parties, and for the purpose of advancing substantial justice, the

delay needs to be condoned. As such, the application is allowed. The delay of 180 days stands condoned, subject to cost of ₹5,000/- to be paid to the Respondents as a condition precedent. After payment of the cost, the appeal shall be registered. The application stands disposed of.

***Prithviraj K. Chavan, J.***

Dv\*