

IN THE HIGH COURT OF BOMBAY AT GOA.
CRIMINAL MISC. APPLICATION NOS. 181 OF 2018
IN
STAMP NUMBER MAIN NO.952 OF 2018.

AHMED TAHER BARBOSA,
REP. THR. HIS POA,
LILLY BARBOSA

... Applicant.

Versus

HAVI HOMES INFRASTRUCTURE
PVT. LTD AMD 4 ORS.

... Respondents.

Ms. P. Nagvenkar and Mr. G. Malik, Advocates for the applicant.
Mr. S. Mahambrey, Advocate for the respondent nos.1,4 and 5.

Coram:- PRITHVIRAJ K. CHAVAN, J.
Date :-27th September, 2019.

ORAL ORDER

Delay of 221 days occurred in filling Criminal Appeal against the impugned order dated 19.6.2017 passed by the Judicial Magistrate, First Class, Panaji in Criminal Case No.OA/227/2014/B.

2. Heard Ms. P. Nagvenkar, learned Counsel appearing for the applicant and Mr. S. Mahambrey, Advocate for the respondents.

3. Ms. P. Nagvenkar, learned Counsel appearing for the

applicant submits that the applicant is working in United States of Emirates (UAE) and, therefore, was unable to follow up the complaint filed before the Judicial Magistrate, First Class, Panaji. Advocate appearing for the applicant was present on 23.1.2017. He sought exemption of the applicant for appearance. Subsequently on 13.2.2017 neither the applicant nor his Advocate could remain present in the matter because Advocate reached late as he was held up elsewhere however, accused nos.1 and 4 were also absent on that day who were represented by their Advocate. The applicant's Advocate though collected the date from the concerned clerk, did not mark his presence.

4. On 24.3.2017, matter was fixed for recording substance of accusation, however, Presiding Judge was not sitting on that day and therefore, the Advocate for the applicant did not appear. However, he noted the next date as 21.4.2017. On 21.4.2017, neither the applicant nor his Advocate appeared in the Court as there was a strike by the Advocates who were boycotting the Court at Panaji. Matter was adjourned on 19.6.2017. On 19.6.2017, neither the applicant nor his

Advocate could appear as they were not aware of that date. Ultimately, the learned Judicial Magistrate, First Class, Panaji dismissed the complaint.

5. Learned Counsel for the respondents, strongly opposed the application by stating that neither there is an affidavit of earlier Advocate filed on record nor there is any bonafide reason shown for the absence of the applicant and, therefore, objected to condone the delay. He placed reliance on the judgment of the Hon'ble Supreme Court in the case of *Esha Battacharjee Vs Managing Committee of Raghunathpur Nafar Academy and others*.¹ The Hon'ble Supreme Court in paragraphs 15 and 16 observed thus:-

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

- 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.*
- 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*

¹ 2013(12) SCC 649

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 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.

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

- a) An application for condonation of delay should be drafted with careful concern and not in a half hazard 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.*
- 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.*
- 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.*
- d) The increasing tendency to perceive delay as a non-serious matter and, hence, lackadaisical propensity can be exhibited in a non-challant manner requires to be curbed, of course, within legal parameters.*

6. Having considered the ratio laid down by the Hon'ble Supreme Court as well as the grounds raised by the applicant in the

application, it is apparent that the application is bonafide and sufficient cause has been shown by the applicant for his absence.

7. As a matter of fact, if the litigation is adjudicated on merits, it would not cause any prejudice to the respondents.

8. For the aforesaid reason, the application needs to be allowed. As such, delay stands condoned.

9. Application stands disposed of.

10. Place the appeal for admission.

PRITHVIRAJ K. CHAVAN, J.

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