

IN THE HIGH COURT OF BOMBAY AT GOA.
CRIMINAL MISC. APPLICATION NO. 337 OF 2018
IN
STAMP NUMBER MAIN NO. 2850 OF 2018.

BHIKAJI L. KERKAR.,	... Applicant.
Versus	
OMPRAKASH K. KULKARNI.,	... Respondent.

Mr. Siddharth Samant, Advocate for the applicant.

Mr. Ganesh R. Naik, Advocate for the respondent.

Coram:- PRITHVIRAJ K. CHAVAN, J.
Date:- 4th July 2019.

P.C.

This is an application for condonation of delay by the original complainant challenging the impugned judgment of acquittal of the respondent in a case under Section 138 of the Negotiable Instruments Act. The impugned judgment is dated 14.9.2017. Application for condonation of delay is moved on 23.8.2018. It is contended on behalf of the applicant that there is delay of 9 months 10 days. According to the learned Counsel for the applicant, he had applied for certified copy on 25.9.2017 which was received by him on 4.10.2017. He could have filed the appeal latest by 17.11.2017, however, on 10.10.2017 his father expired. In support of the same he had tendered death certificate issued by competent authority indicating that father of the applicant had expired on 10.10.2017. It is submitted that

thereafter the applicant met with an accident on 30.10.2017 and there was a fracture to his right femur. Certificate tendered by the applicant issued by Goa Medical College, hospital reveals that he was advised for absence from his duty for a period of 60 days w.e.f. 30.10.2017. Thereafter, Medical Officer from the Department of Orthopaedics Surgery of GMC extended the period of absence of the applicant for 30 days w.e.f. 31.12.2017.

2. The learned counsel for the respondent while objecting the application for condonation of delay contended that from January, 2018 till August 2018 there is neither any application nor any explanation or sufficient cause shown by the applicant to seek condonation of delay. In support of the same the learned Counsel for the respondent has placed reliance on the judgment of the Supreme Court in the case ***Basawaraj and another Vs Special Land Acquisition Officer***¹ Paragraphs 9 to 11 of the said judgment can be reproduced for advantage which read thus:-

9. *Sufficient cause is the cause for which defendant could not be blamed for his absence. The meaning of the word "sufficient" is "adequate" or "enough", inasmuch as may be necessary to answer the purpose intended. Therefore, the word "sufficient" embraces no more than that which provides a platitude, which when the act done suffices to accomplish the purpose intended in the facts and circumstances existing in a case, duly examined from the view point of a reasonable standard of a*

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cautious man. In this context, "sufficient cause" means that the party should not have acted in a negligent manner or there was a want of bona fide on its part in view of the facts and circumstances of a case or it cannot be alleged that the party has "not acted diligently" or "remained inactive". However, the facts and circumstances of each case must afford sufficient ground to enable the Court concerned to exercise discretion for the reason that whenever the Court exercises discretion, it has to be exercised judiciously. The applicant must satisfy the Court that he was prevented by any "sufficient cause" from prosecuting his case, and unless a satisfactory explanation is furnished, the Court should not allow the application for condonation of delay. The court has to examine whether the mistake is bona fide or was merely a device to cover an ulterior purpose. (See: *Manindra Land and Building Corporation Ltd. v. Bhootnath Banerjee & Ors.*, AIR 1964 SC 1336; *Lala Matadin v. A. Narayanan*, AIR 1970 SC 1953; *Parimal v. Veena @ Bharti* AIR 2011 SC 1150; and *Maniben Devraj Shah v. Municipal Corporation of Brihan Mumbai* AIR 2012 SC 1629.)

10. In *Arjun Singh v. Mohindra Kumar*, AIR 1964 SC 993 this Court explained the difference between a "good cause" and a "sufficient cause" and observed that every "sufficient cause" is a good cause and vice versa. However, if any difference exists it can only be that the requirement of good cause is complied with on a lesser degree of proof than that of "sufficient cause".
11. The expression "sufficient cause" should be given a liberal interpretation to ensure that substantial justice is done, but only so long as negligence, inaction or lack of bona fides cannot be imputed to the party concerned, whether or not sufficient cause has been furnished, can be decided on the facts of a particular case and no straitjacket formula is possible. (Vide: *Madanlal v. Shyamlal*, AIR 2002 SC 100; and *Ram Nath Sao @ Ram Nath Sahu & Ors. v. Gobardhan Sao & Ors.*, AIR 2002 SC 1201.)
12. It is a settled legal proposition that law of limitation may harshly affect a particular party but it has to be applied with all its rigour when the statute so

prescribes. The Court has no power to extend the period of limitation on equitable grounds. "A result flowing from a statutory provision is never an evil. A Court has no power to ignore that provision to relieve what it considers a distress resulting from its operation." The statutory provision may cause hardship or inconvenience to a particular party but the Court has no choice but to enforce it giving full effect to the same. The legal maxim "dura lex sed lex" which means "the law is hard but it is the law", stands attracted in such a situation. It has consistently been held that, "inconvenience is not" a decisive factor to be considered while interpreting a statute.

3. No doubt, while entertaining an application for condonation of delay the Courts are required to exercise a discretion judiciously, based on facts and circumstances of each case. It is equally true that sufficient cause cannot be liberally entertained if negligence or inaction, or lack of bona fide is attributed to the parties.

4. From the medical certificate produced on record as well as from the death certificate of the father of the applicant it can be safely inferred that the applicant was suffering from above pains not only due to the death of his father but due to his own fracture of femur bone which in deed a fact which cannot be slightly brushed aside by stating to be negligence on the part of the applicant or inaction or lack of bonafide. No doubt the applicant had not stated or furnished any medical certificate indicating his said ailment from January 2018 onwards, yet, taking into consideration the sufficient cause shown on

record, I consider it to be a fit case to condone the delay. The learned Counsel for the respondent has also placed reliance on the Judgment of Delhi High Court reported in the case of ***Avya Global Connect Ltd Vs Trustron Devices P. Ltd and anr.***² It is stated by the Delhi High Court in paragraphs 7 and 8 that application seeking condonation of delay is being drafted causally in the sense the word "sufficient cause" are missing. Merely because the said words are missing would not *ipso facto* mean that there was no "sufficient cause", therefore, ratio of said judgment can be distinguished accordingly.

5. Consequently the application for condonation of delay is allowed. Delay of 9 months 10 days stands condoned.
6. Registry to register the appeal.
7. Application stands disposed of.

PRITHVIRAJ K. CHAVAN, J.

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