

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO.1141 OF 2018**

- 1 The State of Goa,
Through the Chief
Secretary,
Secretariat, Porvorim,
Bardez-Goa.
- 2 Public Health Department,
Through its
Secretary/Authorised
Officer, Secretariat,
Porvorim, Bardez, Goa. Petitioners

Versus

- 1 Mst. Vishwamber Pritviraj
Morajkar
Minor i.e. 2 years and 5
months.
- 2 Mast. Pradnay Pritviraj
Morajkar,
Minor i.e. 2 years and 5
months, Since both
respondents are minors
They are represented
through their guardian
Sankar Prabhakar Parab,
C/o. H.No.75/ILI/2 Dangui
Colony, Mapusa, Goa.
- 3 Dr. Mallika Markandeya,
Major of age, Doctor,
Attached to District
Hospital, Peddem, Mapusa,
Bardez-Goa. Respondents

Ms. Susan Linhares, Additional Government Advocate for the
Petitioners.

Shri S.D. Patil, Advocate for the Respondents No.1 & 2.
Shri S.D. Lotlikar, Senior Advocate with Shri J. Karn, Advocate
for the Respondent No.3.

Coram:- NUTAN D. SARDESSAI, J.

Reserved on :-27th MARCH, 2019

Pronounced on :- 29th March, 2019

JUDGMENT :

Heard learned Counsels for the parties. Rule. Rule made returnable forthwith with the consent of the learned Counsels appearing for the parties. Learned Counsels appearing for the respondents waive service.

2. This petition invoking the jurisdiction of this Court under Article 227 of the Constitution of India takes exception to the order dated 08/03/2013 and 08/10/2018 passed by the Court of the Adhoc District Judge 1, FTC, North Goa, Panaji pursuant to which the application for extension of time in filing the written statement and thereafter for the condonation of delay in filing the written statement came to be dismissed and the petitioners were not permitted to file the written statement.

3. Heard Ms. Susan Linhares, learned Additional Government Advocate for the petitioners who submitted at

the outset that an application was moved under Order XXVII Rule 7 CPC for the extension of time in filing the written statement by one month. This application however, came to be rejected on a finding by the learned Adhoc District Judge that they were duly served with the summons on 27/11/2012 as per the records. The Government advocate then appearing for the petitioners had not communicated this order to them since he had resigned in the meantime and thereafter the same remained unchallenged on account of lack of knowledge of its passing. An application was thereafter filed for filing the written statement beyond the statutory period setting out the ground on which there was delay and praying for the grant of the application to file the written statement beyond the extended period.

4. This application was opposed on behalf of the respondents on the premise that there was no authority in the petitioners to file the application since the same had to be filed through the Secretary/Authorised Officer from the Secretariat, Porvorim. Besides, there was no diligence on their part in pursuing the matter to its logical conclusion and they were not entitled to any benefit only on the ground that

the petitioners were the Government Authorities. This application too came to be dismissed by the Adhoc District Court thereby leaving the petitioners with no option but to invoke the jurisdiction of this Court to challenge the two orders and seek indulgence to file the written statement as otherwise grave prejudice would be caused to them unlike the respondents who would not suffer any prejudice. She placed reliance in **N. Balkrishnan V/s. M. Krishnamurthy [AIR 1998 SC 3222]**, **Collector, Land Acquisition, Anantnag and Anr. V/s. Mst. Katiji & Ors. [AIR 1987 SC 1353]** and the judgment of a learned Single Judge of this Court in **Sanjay Sadashiv Jadhav V/s. The Join Director, Higher Education, Aurangabad Division & Ors. [2016 (1) ALL MR 256]**. The learned Additional Government Advocate submitted that the delay on the part of the petitioners was not deliberate and therefore on all these grounds the impugned orders had to be quashed and set aside and the petitioners permitted to file their written statement in defence.

5. Shri S.D. Lotlikar, learned Senior Counsel on behalf of the respondent no.3 submitted at the outset that the petitioners had failed to show that the exercise of jurisdiction

by the Trial Court was arbitrary and/or not on sound reasons. He pointed out to the impugned order passed by the learned Adhoc District Judge and submitted that there was no infirmity in the order and therefore the application for extension put forth on behalf of the petitioners could not be accepted. On his behalf he placed reliance in **Postmaster General and Ors. [(2012) 3 SCC 563]**, **Esha Bhattacharjee V/s. Managing Committee of Raghunathpur Nafar Academy & Ors. [(2013) 12 SCC 649]** and in **Lifelong Mediatech Pvt. Ltd. V/s. United India Insurance Co. Ltd. [2018 SCC OnLine Del 9559]** and prayed for the dismissal of the petition. Shri S.D. Patil, learned Advocate on behalf of the respondents No.1 & 2 submitted that there was no ground to sustain the petition and challenge the order passed by the learned Adhoc District Judge. There was due representation of the petitioners by an advocate since 2015 and therefore no interference was called for with the orders under challenge and the petition had therefore to be dismissed.

6. i would consider their submissions, the judgments relied upon and in view thereof pass appropriate orders.

7. The petitioners were served with the summons on 27/11/2012 as per the records and it is only on 08/03/2013 that an application was moved on their behalf for extension of time to file the Written Statement which came to be dismissed by the Trial Court vide the order dated 08/03/2013. This order was not at all challenged at the instance of the petitioners for no plausible reason although it has been tried to be canvassed on behalf of the petitioners that the then Government advocate appearing for the petitioners had resigned and had not even communicated the order to the petitioners and that the dismissal of their application for extension of time was not within their knowledge. The next application moved on behalf of the petitioners for the condonation of delay in filing the written statement beyond the statutory period was filed only on 06/09/2018 i.e. after a lapse of more than 6 years. The grounds urged in the application too are found wanting in merit and therefore no fault can be found with the findings recorded by the learned Adhoc District Judge that despite the petitioners being duly represented by another Government advocate from 2015, there was no diligence shown by the petitioners in filing the written statement or seeking enlargement of time till

September, 2018. Therefore, it cannot at all be heard on behalf of Ms. Susan Linhares, learned Additional Government Advocate that the delay on the part of the petitioners was not deliberate. The petitioners had not even accounted for the reason why the order dated 08/03/2013 was not challenged till 6 years later nor were the petitioners able to justify the delay in seeking for the extension of time to file the written statement.

8. In **N. Balakrishnan** (supra), a two Judge Bench of the Hon'ble Apex Court held that the order of the High Court in revision setting aside the order of the Trial Court condoning the delay of 883 days in filing the application for the condonation of delay due to the failure of the Advocate to inform the appellant as well as his failure to take action was not proper and that the Court should compensate the opposite party in such cases more so where the appellant had secured the compensation from the delinquent Advocate. In the brief facts the suit filed by the respondent for the declaration of title and ancillary reliefs was decreed ex-parte on 28/10/1991. The Appellant, on coming to know of the decree moved an application to set it aside which came to be dismissed for

default on 17/02/1993. He moved an application for setting aside the order only on August 19, 1995 for which there was a delay of 883 days alongwith an application for the condonation of delay by offering an explanation that he had engaged an advocate to make the motion to set the ex-parte decree aside but the Advocate failed to inform him that the application came to be dismissed for default on 17/02/1993. It is only when he got summons from the execution side on 05/07/1995 that he approached his advocate but he was told that perhaps the execution proceedings would have been taken by the decree holder since there was no stay against such execution proceedings.

9. In **N. Balakrishnan** (supra), he signed some papers including a Vakalatnama on the advice of the Advocate for resisting the execution proceedings, besides making the payment of Rupees Two Thousand towards the Advocates fees and other incidental expenses. The fact however was that the advocate did not do anything in the Court even thereafter. An execution warrant was issued by the Court and he became suspicious of the conduct of his advocate and rushed to the Court from where he got the disquieting information that his

application to set aside the ex-parte decree stood dismissed for default as early as 17.02.1993 and that nothing was done in the Court thereafter. He also learnt that his Advocate has left the profession and joined as a legal assistant in some Company and therefore moved the application for setting aside the order. He also moved the District Consumer Disputes Redressal Forum, Madras North ventilating his grievance and claiming the compensation of ₹1,00,000/- from his erstwhile advocate which directed the said advocate to pay the compensation of ₹50,000/- to the appellant besides the costs of ₹500/-.

10. In **N. Balakrishnan** (supra), the Trial Court was pleased to accept the aforesaid explanation and condoned the delay but a Single Judge of the High Court of Madras who heard the revision, expressed the view that the delay of 883 days in filing the application has not been properly explained, allowed the revision and set aside the order of the Trial Court while also dismissing the application for review giving rise to the appeal.

11. In **Collector, Land Acquisition, Anantnag**

(supra), the Hon'ble Apex Court held at paragraph 3 as below:

"3. The legislature has conferred the power to condone delay by enacting Section 5 of the Indian Limitation Act of 1963 in order to enable the Courts to do substantial justice to parties by disposing of matters on 'merits'. The expression "sufficient cause" employed by the legislature is adequately elastic to enable the Courts to apply the law in a meaningful manner which subserves the ends of justice that being the life-purpose for the existence of the institution of Courts. It is common knowledge that this Court has been making a justifiably liberal approach in matters instituted in this Court. But the message does not appear to have percolated down to all the other Courts in the hierarchy. And such a liberal approach is adopted on principle as it is realized that:-

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, 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.

Making a justice-oriented approach from this perspective, there was sufficient cause for condoning the delay in the institution of the appeal. The fact that it was the 'State' which was seeking condonation and not a private party was altogether irrelevant. The doctrine of equality before law demands that all litigants, including the State as a litigant, are accorded the same treatment and the law is administered in an even handed manner. There is no warrant for according a step motherly treatment when the 'State' is the applicant praying for condonation of delay. In fact experience shows that on account of an impersonal machinery (no one in charge of the matter is directly hit or hurt by the judgment

sought to be subjected to appeal) and the inherited bureaucratic methodology imbued with the note-making, file pushing and passing-on-the-buck ethos, delay on its part is less difficult to understand though more difficult to approve. In any event, the State which represents the collective cause of the community, does not deserve a litigant non grata status. The Courts therefore have to inform with the spirit and philosophy of the provision in the course of the interpretation of the expression "sufficient cause". So also the same approach has to be evidenced in its application to matters at hand with the end in view to do even-handed justice on merits in preference to the approach which scuttles a decision on merits. Turning to the facts of the matter giving rise to the present appeal, we are satisfied that sufficient cause exists for the delay. The order of the High Court dismissing the appeal before it as time barred, is therefore, set aside. Delay is condoned and the matter is remitted to the High Court. The High Court will now dispose of the appeal on merits after affording reasonable opportunity of hearing to both the sides."

12. In **Sanjay Sadashiv Jadhav** (supra), a learned Single Judge of this Court observed at paragraph 11 on

considering the submissions of the learned Advocates that in the facts of that case the petitioners had preferred the Writ Petitions before the Division Bench and which were disposed off observing that an alternate remedy was available to them of approaching the Tribunal. They therefore became aware of the forum before which they could challenge their termination and could have acted with promptitude. However, the delay that was caused after the disposal could neither be said to be inordinate nor deliberate and a liberal approach was required to be adopted in the matters of condonation of delay. The learned Single Judge in his view considered the following factors being decisive in the matter of condonation of delay and in the facts at large before him allowed the Writ Petitions:

- (a) Whether, the petitioners would be rendered remedyless if their applications for condonation of delay are rejected?
- (b) Whether, the delay has been caused deliberately?
- (c) Whether, the delay can be said to be inordinate?
- (d) Whether, a pragmatic approach deserves to be taken in the matters of condonation of delay?
- (e) Whether, the litigant can be said to be in a position of deriving undue advantage by causing the delay in their matters?

(f) Whether, laches are attributable to the conduct of the petitioners?

(g) Whether, a pedantic approach is to be avoided?

These judgments are clearly distinguishable on facts and cannot substantiate the case of the petitioners.

13. In **Postmaster General** (supra), the Hon'ble Apex Court was seized with the issue whether the office of the Chief Postmaster General had shown sufficient cause for condoning the delay of 475 days in filing the SLPs before it amongst other issues which would depend on the outcome of this issue. The Hon'ble Apex Court observed at paragraph 28 as below and held at paragraph 29 that in their view it was the right time to inform all the government bodies, their agencies and instrumentalities that unless they have reasonable and acceptable explanation for the delay and there was bona fide effort, there is no need to accept the usual explanation that the file was kept pending for several months/years due to considerable degree of procedural red tape in the process. The government departments are under a special obligation to ensure that they perform their duties with diligence and commitment. Condonation of delay was an exception and

should not be used as an anticipated benefit for the government departments. The law shelters everyone under the same light and should not be swirled for the benefit of a few. Paragraph 28 reads as under:

“28. Though we are conscious of the fact that in a matter of condonation of delay when there was no gross negligence or deliberate inaction or lack of bona fides, a liberal concession has to be adopted to advance substantial justice, we are of the view that in the facts and circumstances, the Department cannot take advantage of various earlier decisions. The claim on account of impersonal machinery and inherited bureaucratic methodology of making several notes cannot be accepted in view of the modern technologies being used and available. The law of limitation undoubtedly binds everybody including the Government.”

14. In **Esha Bhattacharjee** (supra), the Hon'ble Apex Court considering the other judgments culled out the principles broadly as follows:

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 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 bonafides 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.

15. In **M/s. Lifelong Mediatech Pvt. Ltd.** (supra), the Hon'ble Delhi High Court while dealing with an application seeking the condonation of 65 days delay in filing the appeal under Section 37 of the Arbitration and Conciliation Act, 1996 and on considering the judgment of the Hon'ble Apex Court in the Office of the Chief Postmaster General and Ors. (supra) observed at para 12 that while considering the application seeking condonation of delay, the period of delay is not the criteria. A short delay may not be condoned in the absence of an acceptable explanation while a large delay may be condoned if the explanation is satisfactory. The Courts cannot lose track of the fact that normally after the expiry of the period, the right to sue extinguishes and the other side

acquires a right which should not be usually disturbed as it would cause injustice to the opposite party. In the facts at large it was found that the application seeking the condonation of delay was completely silent as to when the certified copy of the impugned judgment was received and the causes for the delay in filing the present appeal. A reading of the application would show that the delay was caused on account of the time spent in seeking opinion from some counsel. This in their view cannot be treated as sufficient grounds as no details have been provided and only a bald statement has been made. In the absence of any satisfactory explanation, it cannot be said that the delay was caused due to bonafide reasons and not on account of negligence or inaction. The Court cannot lose track of the fact that the appellant is not an illiterate litigant but a company which admittedly has its own legal department which is evident from reading para 2 of the application and dismissed the application.

16. In the facts of the present case, the petitioners are a Government Authority and therefore cannot be said to be lacking in knowledge of the consequences of their act. The

contention on behalf of the petitioners therefore that the delay was not deliberate cannot at all be countenanced. No cause whatsoever has been shown so as to interfere with the orders under challenge. In view thereof, there is no basis to exercise the supervisory jurisdiction of this Court under Article 227 of the Constitution of India. In the result, i pass the following

O R D E R

- (i) Rule is discharged.
- (ii) The Writ Petition is dismissed with no orders as to costs.

NUTAN D. SARDESSAI, J.

NH