

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 123 OF 2017

Lakshmi Vilas Bank

..Applicant

v/s.

M/s. Biotor Industries Ltd. and Ors..

..Respondents

Ms. Nupur Awasthi I/by Consulta Juris for Applicant.

Ms. Kunjal Patil I/by Joy Legal Consultants for Respondent Nos. 1 to 3.

Mr. S.R. Agarkar-APP for the State.

CORAM : SMT. SADHANA S. JADHAV, J.

DATED : 12th April 2019.

P.C.

1. This is an application seeking condonation of delay in filing an application seeking leave to appeal, thereby, challenging the judgment and order dated 11th December 2015 by Metropolitan Magistrate, 33rd Court, Ballard Pier, Mumbai in C.C. No. 5790/SS/2010, thereby acquitting the respondents for an offence punishable under Section 138 of Negotiable Instrument Act, 1881. There is a delay of one year and six days i.e. 371 days in filing an application seeking leave to appeal.

2. The learned counsel for the respondents has vehemently contested the application seeking condonation of delay and has submitted that there is no plausible explanation for the inordinate delay caused in filing the application seeking leave to appeal.

3. The learned counsel for the applicant has filed affidavit of the officiating Manager of the applicant-Bank and has submitted that the Manager engaged in legal affairs was transferred and there was some negligence on his part to prosecute the case diligently. The said act was unintentional. The learned counsel for the applicant has placed reliance upon the judgment of the Hon'ble Apex Court in the case of Pralhad Shankarrao Tajale and Ors. V/s. State of Maharashtra and Anr., reported in (2018) 4 Supreme Court Cases 615, wherein the Apex Court has considered the judgment of Justice Vivian Bose in the case of Sangram Singh reported in AIR 1955 SC 425.

4. Upon consideration of the observations of the Hon'ble Justice Vivian Bose, the Apex Court has observed that it would not be necessary to take pedantic approach as substantial justice to the parties to the lis to be done. The observations of Justice Vivian Bose considered by the Apex Court are as follows:

“16..... a code of procedure must be regarded as such. It is *procedure*, something designed to facilitate justice and further its ends: not a penal enactment for punishment and penalties; not a thing designed to trip people up. Too technical a construction of sections that leaves no room for reasonable elasticity of interpretation should therefore be guarded against (provided always that justice is done to *both sides*) lest the very means designed for the furtherance of justice be used to frustrate it.

17..... our laws of procedure are grounded on a principle of natural justice which requires that men should not be condemned unheard, that decisions should not be reached behind their backs, that

proceedings that affect their lives and property should not continue in their absence and that they should not be precluded from participating in them. Of course, there must be exceptions and where they are clearly defined they must be given effect to. But taken by and large, and subject to that proviso, our laws should be construed, wherever that is reasonably possible, in the light of that principle.”

(emphasis in original)

5. In any case the applicant happens to be Scheduled Bank and the individual liability of the respondent in fact involves public money and therefore, this court is inclined to condone the delay in the interest of justice.

6. For the grounds assigned in Paragraphs 3 to 5 of the application, the application is allowed, the delay is condoned in the interest of justice and stands disposed of.

(SMT. SADHANA S. JADHAV, J)