

**FARAD CONTINUATION SHEET
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**CIVIL APPLICATION NO.2708 OF 2017
WITH
CIVIL APPLICATION NO.2709 OF 2017
WITH
FIRST APPEAL (ST.) NO.13924 OF 2017**

Abdul Razzak A. Jabbar ..Applicant

vs

Vitthal Dharma Gujar and Ors. ..Respondents

Mr.Pankaj Das for the applicant

Mr.Abhijit P. Kulkarni for the respondent no.5

**CORAM : K. K. TATED, J
DATE : AUGUST 20, 2019**

P.C.:

. Heard.

2 By this Civil Application, Applicant is seeking condonation of 3 years 364 days delay in filing First Appeal challenging the

judgment and award dated 5.2.2013 passed by MACT, Mumbai in Application No.1203 of 2004 holding that Respondent original Claimants are entitled sum of Rs.2,53,000/- by way of compensation with interest @ 7.5% p.a. from the date of Application till realization of the remaining amount to the original Claimants.

3 The learned counsel for the Applicant submits that though the Applicant appointed Advocate to look after his interest in the matter, he remained absent when the matter was called out before the MACT. He submits that Applicant learnt about the order passed by the Tribunal when the Respondent original Claimant filed Application for recovery and awarded amount. He submits that before the Trial Court, Applicant filed Application on 3.3.2004 for stay of the proceeding in MACT No.1203 of 2004 on the ground that the matter is pending before the Juvenile Court. He further submits that MACT without deciding the said Application proceeded with the matter and held that Applicant is also liable to pay compensation to the Respondent original Claimant. He submits that because of mistake on the part of Advocate, litigant should not suffer. He submits that in the interest of Justice, this Hon'ble court be pleased to condone the delay in filing First Appeal and matter be heard on its own merits. He submits that if delay is not condoned, irreparable loss and injury will be caused to the Applicant.

4 It is to be noted that in the present proceeding though the impugned judgment and award dated was passed by MACT,

Mumbai on 5.2.2013, Applicant filed Application for certified copy on 20.4.2017 and same was made available to the Applicant on 24.4.2017. Thereafter, the Applicant filed present First Appeal before this court in the month of May, 2017. In the entire Civil Application, Applicant failed to disclose the delay in filing Application for certified copy of the impugned judgment and award dated.

5 It is to be noted that the Apex Court in the matter of ***Esha Bhattacharjee vs. Managing Committee of Raghunathpur Nagar Academy and Others***,¹ decided the obligation of the court while dealing with the application for condonation of delay and approach to the adopted while considering grounds for condonation in filing Appeal. Those principles are as under:

“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.

¹ (2013) 12 SCC 649

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.

xiv) 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.

xv) 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.

xvi) 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.

xvii) 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 Bare reading of the Civil Application shows that Applicant failed to disclose sufficient cause for condonation of inordinate delay of more than 3 ½ years in filing First Appeal. Therefore, there is no question of entertaining the present Civil Application. Hence, following order is passed :

- a. Civil Application stands rejected.
- b. In view thereof First Appeal (St.) No.13924 of 2017 and Civil Application No.2709 of 2017 do not survive.
- c. Registration of First Appeal stands rejected.
- d. Civil Application for stay stands dismissed as infructuous.
- e. No order as to costs.

(K.K.TATED, J.)