

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 2371 OF 2000
ALONGWITH
WRIT PETITION NO. 2373 OF 2000
ALONGWITH
WRIT PETITION NO. 2376 OF 2000
ALONGWITH
WRIT PETITION NO. 2380 OF 2000
ALONGWITH
WRIT PETITION NO. 2384 OF 2000
ALONGWITH
WRIT PETITION NO. 2377 OF 2000
ALONGWITH
WRIT PETITION NO. 2389 OF 2000

The Municipal Corporation Of The City Of Thane	...	Petitioners
<i>Versus</i>		
The Raymond Woollen Mills Pvt. Ltd	...	Respondent

Mr. N. R. Bubna a/w. Prishti Saigal a/w. Pooja Malik, Advocate for the
Petitioner.

Mr. H. N. Vakil & Ms. Shriya Mehta i/b. Mulla & Mulla and Craigie Blunt &
Caroe, Advocate for Respondents.

CORAM: RAJESH S. PATIL, J.

DATED : MARCH 21, 2023

ORAL JUDGMENT :-

1 These seven writ petitions are challenging the common judgment
and order dated 1st July 1999 passed by the 4th Additional District Judge,

Thane in Misc. Application nos. 51 of 1998 to 57 of 1998. The Miscellaneous Applications were filed before the District Court, Thane, for condoning the delay in filing the Appeals.

FACTS:

2 The Petitioner corporation re-assess the property of the Respondent for the purpose of property tax on the basis of Rateable Value and issued bills, to the Respondent/Assessee. The respondent/Assessee challenged the rateable value by filing seven appeals viz. Municipal Appeal Nos. 11 of 1989 to 17 of 1989, being the assessment for seven years for the property of the Assessee which were filed under Section 406 (1) of the Maharashtra Municipal Corporation Act (hereinafter referred as “the Corporation Act”).

3 The learned Civil Judge Senior Division, Thane, heard all these Appeals together and by his common judgment and order dated 26th April 1991, allowed the Appeals of the Respondent/Assessee.

4 The Municipal Corporation being dissatisfied, by the judgment and order passed by the Civil Judge Senior Division, Thane, preferred appeals under Section 411 of the Corporation Act, before the District Judge, Thane. However, as there was delay in filing the Appeals, Miscellaneous Applications

for condoning the delay were preferred by the Municipal Corporation. It was the case of the Municipal Corporation in the Misc. Application that the delay was caused as their officers were under the impression that Appeals have already being filed. It is further stated in the delay application that delay was caused bonafidely and there is sufficient cause for not preferring appeals within limitation. The Respondent/Assessee opposed the delay condonation application and stated that the application for obtaining certified copy of impugned order was made by the Municipal Corporation only after 6 years and 8 months, for which there is no whisper in the application. Therefore, the delay should not be condoned. It was further stated that the application is made very casually and no dates are specifically mentioned neither the name of counsels due to whom the delay was caused has been mention. It is further stated that the corporation was absolutely not diligent. The learned District Judge heard all seven Misc. Applications and by common judgment and order dated 1st July 1999, rejected the Misc. Applications for condonation of delay. The present Writ Petitions challenges the said Judgment and Order dated 1st July 1999 passed by the District Judge, Thane.

SUBMISSIONS OF COUNSELS:

5 Mr. Bubna, the learned Counsel for the corporation submitted

that the delay was caused as the officer were under the impression that the appeals have already been filed. He further pleaded that lenient view should be taken as the appeals were filed by a government body and there was a communication gap between the applicant and his counsel. It was further stated that the delay was caused beyond the control of corporation.

5.1 Mr. Vakil, the learned counsel for the Respondent/Assessee stated that no explanation is given for the delay to be condoned, as per section 5 of the Limitation Act. He further emphasis that separate treatment should not be given to the corporation as compared to a private litigant coming to the court. The learned advocate for the respondent to buttress his submissions relied upon two judgments of the Supreme Court viz. *Esha Bhattacharjee v/s. Managing Committee of Raghunathpur Nafar Academy and others*¹, reported in (2013) 12 SCC 649 and the judgment of *Collector and Land Acquisition, Anantnag and Ors. v/s. Katiji and Ors.*² reported in AIR 1987 SC 1353. Mr. Vakil submitted that the ratio laid down by Supreme Court, in both these judgments squarely applies to the present matter, hence the Writ Petitions should be dismissed with costs.

ANALYSIS :

1 (2013) 12 SCC 649

2 AIR 1987 SC 1353

6 I have heard the submissions of both the counsels and with their assistance I have gone through the impugned judgment and order, and the proceedings of the District Court.

6.1 The Petitioner corporation, had preferred an Appeal under Section 411 of the Corporation Act, to the District Court, challenging the Judgment and Order of Civil Judge Senior Division, which was passed under Section 406 of the Corporation Act. The time limit to file an Appeal under Section 411 is One month as per the proviso to the section 411.

Section 5 of the Limitation Act , allows admission of any Appeal after the prescribed period, if the Appellant satisfies the court that he had sufficient cause for not preferring the Appeal within such period.

6.2 In the present matter there is no dispute that the Petitioner Corporation, applied for certified copy of impugned Judgment and Order passed by Civil Judge Senior Division, after 6 years and 8 months. I did not find any satisfactory reasons stated in the Delay Condonation Application explaining the reasons for belatedly applying for certified copy of impugned Judgment and Order. Even while arguing the Writ Petitions the Corporation's counsel was not able to give any justifiable answer, as to why there was delay in applying for certified copy of impugned Judgment and Order. The submissions of Petitioner/Corporation's counsel that the officers of corporation were under the impression that the Appeals were already filed, is difficulty to

believe. The Respondent/Assessee's counsel while opposing the Writ Petition has stated that the corporation should not be given a separate treatment as compared to a private litigant. The counsel for Respondent/Assessee referred to two judgments viz. ***Esha Bhattacharjee (supra)***³. Supreme Court in paragraph nos.21 and 22.4 of the said judgment, observed as under:

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

21.1. (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.

21.2 (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.

21.3 (iii) Substantial justice being paramount and pivotal the technical considerations should not be given undue and uncalled for emphasis.

21.4 (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.

21.5 (v) Lack of bona fides imputable to a party seeking condonation of delay is a significant and relevant fact.

21.6 (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.

21.7 (vii) The concept of liberal approach has to encapsulate the conception of reasonableness and it cannot be allowed a totally unfettered free play.

21.8 (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.

21.9 (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.

21.10 (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.

21.11 (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.*

21.12 (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.*

21.13 (xiii) *The State or a public body or an entity representing a collective cause should be given some acceptable latitude.*

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

22.1 (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.*

22.2 (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.*

22.3 (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.*

22.4 (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.”*

Therefore, in Esha Bhattacharjee (Supra) seven years delay in filing the appeal was not condoned.

6.3 Another judgment referred by the Respondent /Assessee, is of ***Collector and Land Acquisition, Anantnag and Ors. v/s. Katiji and Ors.***⁴. Paragraph no.3 of the said judgment reads as under:

3 *The legislature had conferred the power to condone delay by enacting Section 5 (Any appeal or any application, other than an application under any of the provisions of Order XXI of CPC, 1908, may be admitted after the prescribed period if the appellant or the applicant satisfies the Court that he had sufficient cause for not preferring the appeal or making the application within such period) of the Indian*

4 AIR 1987 SC 1353

limitation Act of 1963 in order to enable the Court 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 Court 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 con- doned 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 be informed 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."

Therefore according to me the findings recorded in the judgments of Esha Bhattacharjee (Supra) squarely covers the present case, so also the judgment of *Katiji (supra)* covers the present case.

7 Apart from these two judgments, there are few other judgments of Supreme Court which deals with the issue of condonation of delay. In recent Supreme Court judgment of ***Majji Sannemma @ Sanyasirao v/s. Reddy Sridevi and Others***⁵, the delay of 1011 days was not condone and application was dismissed. Supreme Court observed in paragraph no.6.2 , 7.2, 7.4 and 8 as follows :

"6.2 We have gone through the averments in the application for the condonation of delay. There is no sufficient explanation for the period from 15.03.2017 till the Second Appeal was preferred in the year 2021. In the application seeking condonation of delay it was stated that she is aged 45 years and was looking after the entire litigation and that she was suffering from health issues and she had fallen sick from 01.01.2017 to 15.03.2017 and she was advised to take bed rest for the said period. However, there is no explanation for the period after 15.03.2017. Thus, the period of delay from 15.03.2017 till the Second Appeal was filed in the year 2021 has not at all been explained. Therefore, the High Court has not exercised the discretion judiciously.

7.....

7.1.....

7.2 In the case of P.K. Ramachandran (supra), while refusing to condone the delay of 565 days, it is observed that in the absence of reasonable, satisfactory or even appropriate explanation for seeking condonation of delay, the same is not to be condoned lightly. It is further observed that the law of limitation may harshly affect a particular party but it has to be applied with all its

rigour when the statute so prescribes and the courts have no power to extend the period of limitation on equitable grounds. It is further observed that while exercising discretion for condoning the delay, the court has to exercise discretion judiciously.

7.3.....

7.4 *In the case of Basawaraj (supra), it is observed and held by this Court that the discretion to condone the delay has to be exercised judiciously based on facts and circumstances of each case. It is further observed that the expression “sufficient cause” cannot be liberally interpreted if negligence, inaction or lack of bona fides is attributed to the party. It is further observed that even though limitation may harshly affect rights of a party but it has to be applied with all its rigour when prescribed by statute. It is further observed that in case a party has acted with negligence, lack of bona fides or there is inaction then there cannot be any justified ground for condoning the delay even by imposing conditions. It is observed that each application for condonation of delay has to be decided within the framework laid down by this Court. It is further observed that if courts start condoning delay where no sufficient cause is made out by imposing conditions then that would amount to violation of statutory principles and showing utter disregard to legislature.*

7.5.....

8. *Applying the law laid down by this Court in the aforesaid decisions to the facts of the case on hand and considering the averments in the application for condonation of delay, we are of the opinion that as such no explanation much less a sufficient or a satisfactory explanation had been offered by respondent Nos.1 and 2 herein – appellants before the High Court for condonation of huge delay of 1011 days in preferring the Second Appeal. The High Court is not at all justified in exercising its discretion to condone such a huge delay. The High Court has not exercised the discretion judiciously. The reasoning given by the High Court while condoning huge delay of 1011 days is not germane. Therefore, the High Court has erred in condoning the huge delay of 1011 days in preferring the appeal by respondent Nos.1 and 2 herein – original defendants. Impugned order passed by the High Court is unsustainable both, on law as well as on facts.”*

8 In judgment of **P.K. Ramchandran V/s. State of Kerala and Another⁶**, wherein the delay of 565 days in filing the appeal was not condoned. Paragraph no.5 of the said judgment is reproduce herein below.

“5. *This can hardly be said to be a reasonable, satisfactory or*

even a proper explanation for seeking condonation of delay. In the reply filed to the application seeking condonation of delay by the appellant in the High Court, it is asserted that after the judgment and decree was pronounced by the learned Sub Judge, Kollam on 30.10.1993, the scope for filing of the appeal was examined by the District Government Pleader, Special Law Officer, Law Secretary and the Advocate General and in accordance with their opinion, it was decided that there was no scope for filing the appeal but later on, despite the opinion referred to above, the appeal was filed as late as on 8.1.1996 without disclosing why it was being filed. The High Court does not appear to have examined the reply filed by the appellant as reference to the same is conspicuous by its absence from the order. We are not satisfied that in the facts and circumstances of this case, any explanation, much less a reasonable or satisfactory one had been offered by the respondent State for condonation of the inordinate delay of 565 days.”

9 In the judgment of ***Postmaster General & others V/s. Living Media India Limited & Another***⁷, the Supreme Court hold that hold that the law of limitation by its everybody equally including a government body and defence of government body impersonal machinery and inherited bureaucratic methodology cannot be accepted in view of the modern technologies being used and available. The paragraph Nos. 22, 26 and 29 reads as under :-

“22. In CWT vs. Amateur Riders Club, there was a delay of 264 days in filing the SLP by the Commissioner of Wealth Tax, Bombay. The explanation for the delay had been set out in the petitioner's own words as under: (SCC p. 604, para 2)

"2. ...(g) The Advocate-on-Record got the special leave petition drafted from the drafting Advocate and sent the same for approval to the Board on 24-6-1993 along with the case file.

(h) The Board returned the case file to the Advocate-on-Record on 9-7-1993 who re-sent the same to the Board on 20-9-1993 requesting that draft SLP was not approved by the Board. The Board after approving the draft SLP sent this file to CAS on 1-10-

1993."

After incorporating the above explanation, this Court refused to condone the delay by observing thus: (SCC p. 604, para 3)

"3. Having regard to the law of limitation which binds everybody, we cannot find any way of granting relief. It is true that Government should not be treated as any other private litigant as, indeed, in the case of the former the decisions to present and prosecute appeals are not individual but are institutional decisions necessarily bogged down by the proverbial red tape. But there are limits to this also. Even with all this latitude, the explanation offered for the delay in this case merely serves to aggravate the attitude of indifference of the Revenue in protecting its common interests. The affidavit is again one of the stereotyped affidavits making it susceptible to the criticism that the Revenue does not seem to attach any importance to the need for promptitude even where it affects its own interest.

[emphasis supplied]

26. In spite of affording another opportunity to file better affidavit by placing adequate material, neither the Department nor the person-in-charge has filed any explanation for not applying the certified copy within the prescribed period. The other dates mentioned in the affidavit which we have already extracted, clearly show that there was delay at every stage and except mentioning the dates of receipt of the file and the decision taken, there is no explanation as to why such delay had occasioned. Though it was stated by the Department that the delay was due to unavoidable circumstances and genuine difficulties, the fact remains that from day one the Department or the person/persons concerned have not evinced diligence in prosecuting the matter to this Court by taking appropriate steps.

27. It is not in dispute that the person(s) concerned were well aware or conversant with the issues involved including the prescribed period of limitation for taking up the matter by way of filing a special leave petition in this Court. They cannot claim that they have a separate period of limitation when the Department was possessed with competent persons familiar with court proceedings. In the absence of plausible and acceptable explanation, we are posing a question why the delay is to be condoned mechanically merely because the Government or a wing of the Government is a party before us.

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.

29. *In our view, it is 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 is 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.”*

10 In judgment of the ***State of Uttar Pradesh and Ors. Vs. Sabha Narain and Ors.***⁸. Paragraph No.3 reads as under :-

“3. We have repeatedly discouraged State Governments and public authorities in adopting an approach that they can walk in to the Supreme Court as and when they please ignoring the period of limitation prescribed by the statutes, as if the Limitation statute does not apply to them. In this behalf, suffice to refer to our judgments in the State of M.P. v. Bherulal and State of Odisha v. Sunanda Mahakuda. The leeway which was given to the Government/public authorities on account of innate inefficiencies was the result of certain orders of this Court which came at a time when technology had not advanced and thus, greater indulgence was shown. This position is no more prevalent and the current legal position has been elucidated by the judgment of this Court in Postmaster General v. Living Media India Ltd. Despite this, there seems to be little change in the approach of the Government and public authorities.”

(Emphasis supplied)

11 Therefore, it is clear from the law as laid down by the Supreme

Court in various judgments that the defence of bureaucratic methodology cannot be and should not be accepted by the courts and when there is absence of diligence by department prosecuting a matter, delay cannot be condoned. It is also clear that the condonation of delay is an exception and should not be used as an anticipated benefit for Government department by offering usual explanation that file was kept pending due to procedural red tape. There is no proper explanation for not filing the Appeals before the District Court on time. In the present case the corporation applied for a certified copy after a period of more than 6 years and 8 months. Therefore, according to my view, there is no sufficient explanation is given by the Corporation to condone the delay.

CONCLUSION :

13 Taking into consideration the facts narrated in the present case, wherein there was delay of 6 years and 8 months in applying for certified copy of impugned judgment and order, and in the light of the law laid down by Supreme Court, in my view the District court has rightly rejected the Delay condonation application, as the Petitioner was not able to satisfy that there was sufficient cause to condone the delay. Hence, this is not a fit case where the Writ Petitions should be entertain under Article 227 of the Constitution of India. Writ Petitions are accordingly dismissed.

(RAJESH S. PATIL,J.)