

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL/CRIMINAL APPELLATE JURISDICTION

CR. WRIT PETITION NO.3114 of 2017

Sanjay Gopalal Mour ... Petitioner

v/s.

Motilal Laxmichand Salecha & anr. ... Respondents

Mr. Yashpal Thakur for the petitioner.

Mr. Anil R. Mishra for respondent no.1.

CORAM : DAMA SESHADRI NAIDU, J.

14th October 2019.

P.C.

The applicant is an accused in C.C.No.1353/SS/2016 pending before the learned Metropolitan Magistrate, 43rd Court at Borivali. After receiving the summons, the applicant appeared on 7th September 2016. Later he filed a revision application before the Court of Sessions, Dindoshi, challenging the trial Court's issuing process against the applicant. He filed that revision with a delay of 17 days. To have that condoned, he filed Misc. Application No.188/2016.

2. Through its order dated 12th June 2017, the Court of Sessions at Dindoshi dismissed the Misc. Application. That is, it has refused to

condone the delay of 17 days. Aggrieved, the petitioner has filed this criminal writ petition.

3. Shri Yashpal Thakur, the learned counsel for the petitioner, has submitted that though sufficient cause has been shown in the Misc. Application, the Revisional Court has disregarded the petitioner's explanation and dismissed the Misc. Application.

4. On the other hand, Shri Anil Mishra, the learned counsel for the first respondent, has strenuously contended that the impugned order is unassailable. According to him, the revisional Court has assigned reasons while refusing to condone the delay. Shri Mishra has contended, first, that Misc. Application contains no reasons, much less any sufficient explanation about the delay. Second, the petitioner has been, according to him, aware of the proceedings all along. Yet he took more than 90 days to approach the revisional Court. In this context, Shri Mishra stresses that the petitioner's plea that he has applied for a certified copy is only a rouse to reduce the period of delay, which is otherwise larger.

5. To elaborate, Shri Mishra has submitted that when the petitioner appeared, he had all the documents and the complaint served on him. So, the question of his applying afresh for certified copies makes no sense. Besides, Shri Mishra also stresses that the dishonoured cheque covers a huge amount: Rs.1,86,78,313/-. Therefore, this Court may not upset the Revisional Court's

discretionary order.

6. Heard Shri Yashpal Thakur for the petitioner and Shri Anil Mishra for the 1st respondent.

7. Indeed, we cannot say that the Misc. Application contains compelling reasons for the Revisional Court to condone the delay. And the amount of cheque is about 1.86 crore, too. But the quantum hardly affects the adjudication, nor does it condone our cutting procedural corners, especially mandatory ones, if any.

8. That said, I must also acknowledge that the petitioner has not supplied any compelling reason to justify the delay. But a delay of 17 days cannot be said to be inordinate for the petitioner to disentitle himself from contesting a case on the merits or testing a decision at higher echelons. It is trite to note that courts have always adopted a liberal approach in condoning any reasonable delay and in letting the parties have their grievance redressed on the merits. There is no cavil that the delay is not inordinate, nor does the respondent suffer any prejudice if the petitioner is allowed to explore his revisional avenues—whatever may be the strength of his contentions on the merits.

I, therefore, set aside the order dated 12th June 2017 subject to the petitioner's paying Rs.25,000/- as costs to the first respondent. So the delay is condoned. The revisional Court will entertain the revision on merits. Whether the matter before the trial Court be stayed pending the revision does not lie within this Court's province. It is left to the

sole discretion of the revisional Court. The cost be deposited in two weeks from the date the order is uploaded.

(DAMA SESHADRI NAIDU, J)

L.S. Panjwani, P.S.