

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

931 CIVIL APPLICATION NO.8820 OF 2019
IN SAST/18580/2019 WITH CA/8819/2019
IN SAST/18580/2019

GRAM PANCHAYAT SHIRASGAON
THROUGH GRAMSEVAK
VERSUS
GULABRAO S/O KONDIRAM PAGIR
THROUGH ITS GENERAL POWER OF ATTORNEY

...
Mr.R.R.Karpe, Advocate for applicant.
Mr.K.N.Shermale, Advocate for R-1.
Ms. Suvarna Zawre, Advocate for R-3 & 5.
Mr. S.N.Morampalle, A.G.P. for R-4.

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CORAM : V.L. ACHLIYA,J.
DATE : 25/02/2020

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ORAL ORDER:

1. The applicant/appellant [original defendant No. 4] has preferred this application along with appeal seeking condonation of 1158 days delay in filing appeal for the reasons set out in detail in the application.
2. Heard learned counsel for applicant/appellant, counsel representing respondent No. 1 [original plaintiff], respondent No. 3 and 5 as well as learned A.G.P. representing respondent No. 4.

3. For the sake of brevity the parties are referred as referred before the trial Court.

4. In brief, it is the contention of learned counsel for applicant/appellant that the appeal is filed by applicant/appellant-defendant No. 5, the Village Panchayat to protect public interest and more particularly the students prosecuting education from the school run by the applicant which has been ordered to be demolished by way of decree of mandatory injunction passed by first appellate Court.

5. It is submitted that the subject matter of appeal is a school building constructed over the land originally owned by respondent Nos. 6 and 7 and donated to village panchayat for construction of school. It is submitted that after the land donated by respondent Nos. 6 and 7 to the village panchayat, the appellant has constructed school building over the said land from the funds provided by Zilla Parishad. Large number of students and more particularly belonging to poor strata of society are taking education from the school building which is ordered to be demolished on the basis of decree passed in a suit instituted by respondent No. 1/plaintiff who is neither the owner nor entitled to possession of suit land. "The suit land is open space in lay-out reserved

for public purpose. It is submitted that the present elected body of village panchayat got elected and taken charge of village panchayat on 22/01/2018. The earlier body of village panchayat acted negligently in prosecuting the appeal and taking steps to file appeal and to protect the interest of village panchayat. After newly elected body taken charge as it was revealed that on 26/03/2019 the order has been passed to appoint the Commissioner for execution of decree to remove /demolish school building. Immediately thereafter the steps were taken to protect the interest of village panchayat. After seeking advise and collecting copies of requisite documents, the appeal has been preferred. In the process the delay of 1158 days has been caused. In this back-ground learned counsel submits that the delay caused in filing appeal can not be termed as deliberate and intentional. The delay to file appeal has been caused due to failure on the part of earlier elected body to take necessary steps to protect the interest of village panchayat. As soon as the newly elected body got knowledge about the orders passed in the matter, they have taken steps to protect the interest of village panchayat.

6. On the other hand, learned counsel for respondent No. 1/original plaintiff opposed the

application with contention that the cause assigned is not sufficient to condone the delay. Learned counsel submits that applicant has not approached with clean hands and made false and incorrect statement. The applicant/appellant was represented through-out the proceeding through its Gramsevak. The applicant/village panchayat fully aware the judgment and decree dated 18/01/2016 passed by first appellate Court as well as the execution proceeding filed by respondent No. 1. The Gramsevak of village panchayat appeared and filed various applications in execution proceeding. It is submitted that the applicant has preferred appeal only for the reason that the appellate Court has granted relief to recover the cost from the officers responsible for allowing the construction of school building over the suit land. By referring the decision of Apex Court in the case of ***Balwant Singh (Dead) V/s Jagdish Singh and others reported in AIR 2010 SCC 3043***, the learned counsel contended that liberal approach to be adopted can not be stretched to the extent of causing injustice to opposite party. It is submitted that considering the negligence, default and inaction on the part of applicant to file appeal within time, the application deserves to be rejected.

7. I have carefully considered the submissions

advanced in the light of overall facts of the case, the cause assigned for condonation of delay and consequences to follow if delay is not condoned. The applicant/appellant is a village panchayat. The appeal is preferred to protect the interest of village panchayat and more particularly to save the school building from demolition in consequence of decree in the nature of mandatory injunction passed by the first appellate Court. There is no dispute as to the fact that present appeal is preferred by the village panchayat after the new body elected taken charge in the year 2018 after they came to know the order of demolition of school building passed in appeal. It appears from record that through-out the proceeding the applicant – village panchayat represented through its Gramsevak. In the execution proceeding though the Gramsevak has recorded appearance and made various applications. However, no appeal filed against Judgment and decree passed by first appellate Court. In that view the possibility can not be ruled out that the members of village panchayat may not be made aware the consequences of decree passed by first appellate Court. Only after the newly elected body taken charge of village panchayat and the order to demolish suit structure, the members of village panchayat realized the consequences of not filing appeal and then taken steps to file appeal so as to

protect the interest of village panchayat. In that view, the reasons assigned for condonation of delay deserves to be accepted as satisfactory explanation as to delay in filing appeal.

8. It appears from the Judgment and decree passed by the trial Court and the first appellate Court, the construction of school building has been made over the open space kept reserved in approved lay-out for public purpose. The respondent No. 1/plaintiff filed suit claiming that he had purchased the plot bearing No. 14 out of G.No. 27/4 of Mauje Shirasgaon from defendant Nos. 6 and 7. The respondent No. 1-plaintiff has approached with the case that the suit land i.e. open spaces admeasuring 616 Sq.M. and 724 Sq. M. out of G.No. 27/4 of sanctioned lay-out are kept for beneficial enjoyment of plaintiff and other purchasers of plot from said lay-out. The respondent Nos. 6 and 7 had no right to vest/donate such land to village panchayat for the purpose of construction of school building. They have illegally donated the land to village panchayat. The construction made over the suit plots/suit land is illegal and liable to be demolished.

9. The trial Court has partly decreed the suit and declared the gift deed executed by defendant No. 6 in

favour of defendant No. 5 i.e. the applicant as illegal and passed order to restrain defendant No. 5 from creating third party interest in respect of said land. In an appeal preferred by respondent No. 1/plaintiff, the appellate Court has allowed the appeal. The appellate Court has granted decree of mandatory injunction and directed the defendant No. 5 to demolish the school building constructed over the suit land. Failure to demolish the suit structure by defendant No. 5/appellant, the executing Court appointed Court Commissioner to carry out the work of demolition. It appears that order of appointment of commissioner to demolish the construction of school building came to be passed on 26/03/2019. Subsequent thereto, the applicant i.e. members of newly elected body of village panchayat came to know about the orders passed in the matter and demolition to be carried out through Court Commissioner. Accordingly, the appeal has been preferred. In that view, the cause assigned by the applicant/appellant seeking condonation of delay deserves to be accepted as sufficient to condone the delay. In fact, the negligence and failure on the part of earlier elected body of village panchayat and its Gramsevak to take steps in the matter has caused delay in filing appeal. For such acts of negligence on the part of Gramsevak and office bearers of village

panchayat, the village panchayat and villagers can not be made to suffer. In that view, the delay deserves to be condoned. If delay is condoned, no serious prejudice would cause to the respondents as ultimately the case will be decided on merit. On the contrary, if delay is not condoned, it may result into drastic consequences. There is every likelihood that meritorious matter may be rejected for technical reason if delay is not condoned.

10. It is settled position that while dealing with an application seeking condonation of delay, the Courts of law are expected to adopt liberal approach. In the case of ***Isha Bhattacharjee V/s Managing Committee of Raghunathpur Nafar Academy and others reported in (2013) 12 SCC 649***, the Apex Court after taking survey of all the previous decisions rendered by the Apex Court culled out the broad guidelines to be followed by the Courts of law to deal with an application for condonation of delay. The guidelines as laid down reads 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.

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.

11. Thus, keeping in mind the broad guidelines, I am of the view the delay deserves to be condoned. No prejudice would cause to other side if delay is condoned as ultimately the case will be decided on merit. On the contrary, if delay is not condoned, there is every likelihood that meritorious matter may be

rejected for technical reason. It would lead to dismissal of appeal and consequences thereof results in demolition of school building, where large number of students are taking education. I am, therefore, inclined to allow the application. Accordingly, the application is allowed in terms of prayer clause 'B'. Delay condoned. Appeal be registered. Office objections, if any, be removed within two weeks from the date of registration of appeal.

12. Interim relief operating to remain in operation till further orders.

13. Civil application disposed of in above terms.

[V.L.ACHLIYA]
JUDGE

KNP