

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

CIVIL APPLICATION NO. 13783 OF 2019
IN
SECOND APPEAL ST. NO. 33674 OF 2019

KANTILAL LALCHAND BORA AND OTHERS
VS
AMRATRAO @ AMRUTRAO SHANKARRAO DESHMUKH

Mr. Amol S. Sawant, Advocate for the applicants
Mr. V. H. Dighe, Advocate for respondent

CORAM : S. M. GAVHANE, J.

RESERVED ON : 24-01-2020

PRONOUNCED ON : 30-01-2020

P. C.

. Applicants-original defendants have filed this application to condone the delay of 325 days caused in filing the second appeal aggrieved by the judgment and decree passed by the District Judge-1, Ambajogai thereby dismissing their RCA No. 21 of 2010 challenging the decree passed by Civil Judge, Senior Division, Ambajogai in Special Civil Suit No. 41 of 2001 filed by respondent-original plaintiff.

2. Mr. Sawant, Advocate for the applicants submitted that the respondent filed aforesaid suit for declaration of title and perpetual injunction against applicants in respect of Municipal House No. 446/4, City survey No. 3847 of Parali Vaijyanath, Dist. Beed and said suit was decreed on 26-04-2007 by the Civil Judge,

Senior Division, Ambajogai. Aggrieved by the said decree applicants filed aforesaid appeal in the court of District Judge, Ambajogai against the respondent and that was dismissed on 13-08-2018. It is submitted that Kantilal Lalchand Bora- applicant No. 1 who is brother of other applicants was looking after affairs of joint family consisting of the applicants. He handled entire litigation throughout. After taking certified copies from the District Court applicant No. 1- Kantilal Lalchand Bora suffered many crises in the family on account of personal and medical reasons. His wife is suffering from various medical ailments and he was to look after her on account of her frequent hospitalization. Therefore, he was consistently busy and engrossed in his personal and medical problems on account of ill-health of his wife and could not look after the litigation after obtaining the certified copies. It is further submitted that Shantilal Lalchand Bora applicant No. 2 who was essentially relying upon the wisdom of Kantilal Lalchand Bora was throughout lamenting under impression that his brother will take necessary steps to pursue the matter before the higher forum on account of dismissal of their appeal. However, on account of above said reasons Kantilal could not take necessary steps to file second appeal before the High Court. So also, Shantilal was unaware regarding the steps to be taken to pursue further litigation. He was advised by the local Advocate to approach and seek guidance from the Advocate of High Court for filing the appeal. Accordingly, he approached the Advocate in the High Court. However, delay has been caused in filing the appeal. It is further submitted that delay caused is neither intentional nor deliberate. Learned counsel further submitted that

valuable statutory rights of the applicants in the suit property is the subject matter of the second appeal as the applicants' claim to be registered owners of suit property on the basis of registered sale deed executed in their favour. Thus, it is submitted that the delay may be condoned and appeal be registered by allowing the application.

3. Learned counsel appearing for the applicants to support his aforesaid submissions has relied upon the decision of this court dated 02-07-2019 in civil application No. 7207 of 2016 in Second Appeal (st.) No. 35417 of 2015 [Coram: V. L. Achliya, J.] and particularly on paragraph No. 8 of the said order, which reads thus:

8. On due consideration of the cause assigned to condone the delay and overall facts of the case in the light of broad principles laid down by the Apex Court in the case of *Esha Bhattacharjee (supra)*, I am of the view that the delay deserves to be condoned. In case, delay is not condoned, there is every likelihood that a meritorious matter may be rejected for technical reasons. On the other hand, if delay is condoned, no serious prejudice would be caused to the respondents as ultimately the matter would be decided on its own merits. Whether appeal raises substantial questions of law can be examined at the stage of hearing of the appeal for admission. I am, therefore, inclined to allow the application.

4. Moreover, learned counsel appearing for the applicants

has relied upon the decision of the Apex Court in the case of *Esha Bhattacharjee Vs Managing Committee of Raghunathpur Nefar Academy and others*, (2013) 12 SCC 649. The Hon'ble Apex Court has laid down the principles applicable to an application for condonation of delay and said principles are as follows:

- 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 term “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 encapsulate 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, behavior 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 scrutinised 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 haphazard 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 nonchalant manner requires to be curbed, of course, within legal parameters.

5. Mr. Dighe, learned counsel appearing for the respondent/ original plaintiff opposed to grant application on the grounds that the applicants have not shown sufficient cause to condone the delay. He submitted that suit was decreed on 26-04-2007. Aggrieved by the decree respondents/applicants had filed appeal before the appellate court and while filing the said appeal also there was delay of two and half years. Said delay was ultimately condoned and the appellate court proceeded with the appeal and said appeal was dismissed on 13-08-2008. Substance of argument of learned counsel appearing for the respondent is that applicants are in habit of purposely making delay in filing the proceeding so as to make delay to execute the decree passed in favour of respondent. Therefore, according to him, it is not the fit case to condone the delay and thus submitted that application may be rejected.

6. I have carefully considered the submissions made by the learned counsel appearing for the applicants and the respondent.

7. Here, it would be appropriate to refer the decision of the

Apex Court in the case of *Collector, Land Acquisition, Anantnag and another Vs Ms. Katiji and others* (1987) 2 SCC 107, wherein in paragraph Nos. 3, it has been observed thus:

3. The legislature has conferred the power to condone the delay by enacting Section 5 of the Indian Limitation Act of 1963 in order to enable the courts 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 courts 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 appellate.

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 condoned 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 consideration are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in in-justice 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. Turning to the facts of the matter giving rise to the present appeal, we are satisfied that sufficient cause exists for the delay. The order of the High Court dismissing the appeal before it as time-barred, is therefore, set aside. Delay is condoned. And the matter is remitted to the High Court. The High Court will now dispose of the appeal on merits after affording reasonable opportunity of hearing to both the sides.

8. There is no dispute that the appellate court by the judgment and order dated 13-08-2018 dismissed the appeal and

against the said decision the applicants have filed second appeal alongwith this application and to file said appeal delay of 325 days has been caused. According to the applicants, applicant No. 1- Kantilal Lalchand Bora who appears to be brother of applicant Nos. 2 to 5 was looking after their joint family and the present litigation, but as his wife is suffering from various medical ailments and she was hospitalized and as he was consistently busy, he could not look after the litigation and therefore, delay has been caused. It is further contention of the applicants that applicant No. 2-Shantilal Lalchand Bora pursue the litigation but he was novice to the litigation was unaware regarding the steps to be taken. These contentions of the applicants are not denied by the respondent as no reply is filed. Therefore, there is no reason to not accept the above said contentions and grounds of delay. Moreover, it appears that valuable rights of the applicants are there in the immovable property which is subject matter of the second appeal. In the above circumstances, it cannot be said that delay caused in filing the appeal is intentional or deliberate. Moreover, there is nothing on record to suggest that applicants would be benefited by making the delay. True that there was delay in filing the appeal before first appellate court which was condoned as argued by learned counsel for the respondent, but that does not mean that there is no sufficient cause to condone delay as requested by the applicants. In case delay is not condoned there is every likelihood that meritorious matter may be rejected for technical reasons. On the other hand if the delay is condoned no serious prejudice would be caused and matter would be decided on merits. In all the above circumstances,

I find that the applicants have shown sufficient cause to condone the delay and delay needs to be condoned to decide the matter on merits after hearing the parties, in view of the decisions of the Apex Court in the case of *Esha Bhattacharjee* (supra) and *Collector, Land Acquisition, Anantnag* (supra) on imposing some cost on the applicants having regard to the circumstances present in the matter. Therefore, following order is passed:

ORDER

- I. Application is allowed.
- II. Delay caused in filing the appeal is condoned subject to cost of Rs.1,500/- payable to the respondent-original plaintiff by the applicants within two weeks from today.
- III. After paying the cost as above to the respondent or on depositing the same in the court within two weeks from today, the appeal be registered and place it before the court for further consideration on 11-03-2020.

[S. M. GAVHANE, J.]