

IN THE HIGH COURT OF BOMBAY AT GOA**MISC.CIVIL APPLICATION NO. 222 OF 2020
IN
STAMP NUMBER MAIN NO. 982 OF 2020****THE EXECUTIVE ENGINEER, W. D. XXV
(ROADS), THR. GANESH B. VELIP****... Applicant****Versus****FRANCISCO ANTONIO RODRIGUES****... Respondent**

Ms. Sulekha S. Kamat, Additional Government Advocate for the Applicant.
Mr Deepak Goankar, Advocate for the Respondent.

CORAM: DAMA SESHADRI NAIDU, J.
DATE: 7th October 2020.

ORDER:**Introduction:**

In the land acquisition proceedings, once the compensation is enhanced, the State files an appeal. It files that appeal with a delay of 261 days. To have that delay condoned, the State applies and assigns the reasons of administrative delay. Opposing the application, the respondent attacks the grounds of delay. He pleads that the State's excuse is the routine bureaucratic rigmarole. Should the State deserve this Court's indulgence for the condonation of delay?

Facts:

2. In 2004, the Government initiated Land Acquisition proceedings. In September 2005, those proceedings culminated in an award. That award has led to proceedings under section 18 of the Land Acquisition Act. Eventually, through its Judgment dated 3.4.2019, the Reference Court enhanced the compensation. Aggrieved, the State has filed this First Appeal.

3. The State has filed this First Appeal with a delay of 261 days. To have that delay condoned, it has applied under section 5 of the Limitation Act.

Submissions:

Appellant:

4. The learned Additional Government Advocate has taken me through the pleadings, especially para 7 of the application. Then, she has stated that the delay was under unavoidable circumstances. Therefore, she has urged this Court to condone the delay, especially in the public interest.

Respondent:

5. Shri Deepak Gaonkar, the learned counsel for the respondent, in his typical trenchant style of advocacy, has opposed the delay condonation petition tooth and nail. He has cited a plethora of precedents and contended that the State's application for the delay condonation contains no valid explanation. Instead, it has only described the file pushing on the officials' part.

6. Shri Gaonkar has further pointed out that though the applicants have known of the proceedings before the Reference Court and its judgment, they did not swing into action until the respondents laid execution for the realisation of the award amount. In this context, he has relied on these judgments: (i) *Post Master General v. Living Media India Ltd.*¹; (ii) *Maniben Devraj Shah v. Municipal Corporation of Brihan Mumbai*²; (iii) *Esha Bhattacharjee v. Managing Committee of Raghunathpur Nafar Academy*³; (iv) *Pundlik Jalam Patil v. Executive Engineer, Jalgaon Medium Project*⁴; and *State of Maharashtra v. Shri Vithu Kalya Govari*⁵,

7. Heard the learned counsel for the applicant and the learned counsel for the respondent.

1(2012) 3 SCC 563

2(2012) 5 SCC 157

3(2013) 12 SCC 649

4(2008) 17 SCC 448

5(2008) 4 All MR 856

Discussion:

8. Indeed, the facts are not in dispute. The State has filed this appeal against the Reference Court's enhanced award--with a delay of 261 days. To have that delay condoned, the State has filed this application. Agreed, the State has set out in its application the bureaucratic rigmarole of procedure it went through before it could file the appeal. Now, let us examine the precedents the respondent has cited at the Bar.

9. In *G. Ramegowda v. Land Acquisition Officer*⁶, the issue concerned the delay condonation in the land acquisition proceedings. The State maintained that application. In that context, the Supreme Court has observed that in cases to which Government is a party, there is yet another aspect which, perhaps, cannot be ignored. If appeals brought by Government are lost for defaults such as delay, no person is individually affected; but what, in the ultimate analysis, suffers is public interest. The decisions of Government are collective and institutional, and do not share the characteristics of decisions of private individuals. Then, *G. Ramegowda* went onto observe that in assessing what, in a particular case, constitutes 'sufficient cause' for Section 5, it might, perhaps, be somewhat unrealistic to exclude from the considerations those factors peculiar to and characteristic of the functioning of the Government. Governmental decisions are, it stresses, proverbially slow and encumbered, thanks to the procedural red tape.

10. In *CWT v. Amateur Riders Club*⁷, the Supreme Court has acknowledged that the Government should not be treated as any other private litigant. For, in the case of the former, the decisions to present and prosecute appeals are not individual but are institutional, necessarily bogged down by the proverbial red tape. Then, Amateur Riders Club served a caveat: There are limits to this also. On facts, the Court has found that "even with all this latitude, the explanation offered for the delay in this case merely

⁶(1988) 2 SCC 142

⁷1994 Supp (2) SCC 603

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.”

11. In *Collector, Land Acquisition, Anantnag v. Mst. Katiji*⁸, the Supreme Court, per M. P. Thakkar J, has observed that the legislature has conferred the power to condone delay under section 5 of the Indian Limitation Act only 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. It is to subserve the ends of justice. First, it underpinned its justifiably liberal approach in the matters of delay. Then, it lamented that "the message does not appear to have percolated down to all the other courts in the hierarchy”.

12. According to *Mst. Katiji*, courts should adopt a liberal approach on the premise that:

1. Ordinarily a litigant does not stand to benefit by lodging an appeal late.
2. Refusing to condone delay, the court may be throwing out a meritorious matter at the very threshold and, thus, defeating the cause of justice. As against this, when the delay is condoned, the highest that can happen is that a cause would be decided on merits.
3. "Every day's delay must be explained" does not mean that a pedantic approach should be adopted. Why not every hour's delay, every second's delay? The doctrine must be applied in a rational, commonsensical, and pragmatic manner.
4. When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred.

⁸AIR 1987 SC 1353 (as quoted in *Maniben Devraj Shah*)

5. There is no presumption that delay is occasioned deliberately, or because of culpable negligence, or because 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 because of its power to legalise injustice on technical grounds but because it can remove injustice. It is expected to do so.

13. In *Pundlik Jalam Patil*, the Supreme Court, per B. Sudershan Reddy J, has held that the power to condone the delay rests with the court. No doubt, it is discretionary. On facts, the petitioner filed the appeal with a delay of 1724 days. In the delay condonation application, the petitioner, as noted by the Supreme Court, wrongly stated the cause for delay. He pleaded that he was unaware of the stand taken by the Land Acquisition Officer as well as of impugned judgment and award. The record contradicted the petitioner's solemn averments. In that context, *Pundlik Jalam Patil* has held that an incorrect statement made in the application seeking condonation of delay itself is sufficient for the Court to reject the application with no further inquiry. A party taking a false stand to get rid of the bar of limitation, according to *Pundlik Jalam Patil*, should not be encouraged to get any premium on his falsehood.

14. In *Living Media India*, heavily relied on by the respondent, the delay was 427 days. The Supreme Court, per P. Sathasivam J (as his Lordship then was), was not satisfied with the explanation the petitioner offered for the delay condonation. So it required the petitioner to file a better affidavit. But that did not improve the situation. Then, on facts, the Supreme Court has observed that "in spite of affording another opportunity to file a better affidavit by placing adequate material, neither the Department nor the person-in-charge has supplied any explanation" why they have not applied for the certified copy within the prescribed period. The Department stated that the delay was due to unavoidable circumstances and genuine difficulties. But the fact remained, as noted by *Living Media India*, that from

day one the Department or the person/persons concerned have not evinced diligence in prosecuting the matter by taking appropriate steps.

15. Finally, *Living Media India* observes that in a matter of condonation of delay when there was no gross negligence or deliberate inaction or lack of *bona fides*, a liberal approach has to be adopted to advance substantial justice. But “in the facts and circumstances”, *Living Media India* refused to provide any relief to the petitioner, from whom no satisfactory explanation was forthcoming.

16. In *Maniben Devraj Shah*, the delay was over seven years. The Municipal Corporation has provided the excuse for the delay: the misplacement of papers and transfer of the officials concerned. Then, the Supreme Court has found that the explanation, however, is silent about when the papers got misplaced and when they were traced. Besides, it has also found no explanation why the Municipal Corporation has not applied on time for the certified copy of the judgment. Nor has it found any convincing answer as to how the transfer of an official delayed filing the appeal.

17. In the above factual backdrop, the Supreme Court, per G. S. Singhvi J, has observed that the law of limitation is founded on public policy; it has not been enacted with the object of destroying the rights of the parties but to ensure that they approach the Court for the vindication of their rights without unreasonable delay. Then, it has referred to the expression 'sufficient cause' used in Section 5 of the Limitation Act, 1963. According to *Maniben Devraj Shah*, no hard and fast rule has been or can be laid down for deciding the applications for condonation of delay. Yet it has advocated “a liberal approach ... so that substantive rights of the parties are not defeated merely because of delay.”

18. *Maniben Devraj Shah* accepts that a liberal and justice-oriented approach must be adopted in the Court's exercising power under Section 5 of the Limitation Act and other similar statutes. But the Courts cannot

become oblivious that the successful litigant has acquired certain rights based on the judgment under challenge and he had spent a lot of time and incurred a lot of cost by then. What colour the expression 'sufficient cause' would get in the factual matrix of a given case, according to *Maniben Devraj Shah*, would largely depend on the *bona fide* nature of the explanation. It pertinently notes that in cases involving the State and its agencies/instrumentalities, the Court can note that sufficient time is taken in the decision-making process. But “no premium can be given for total lethargy or utter negligence on the part of the officers of the State and/or its agencies/instrumentalities”. In the context of seven-year delay, *Maniben Devraj Shah* has found the “cause shown by the Corporation ... , to say the least, wholly unsatisfactory”.

19. In *Esha Bhattacharjee*, the Supreme Court, per Deepak Mishra J (as his Lordship then was) has summarised the precedential position on the question of delay condonation. According to it, these principles emerge:

- (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 must remove injustice.*
- (ii) The term ‘sufficient cause’ should be understood in its proper spirit, philosophy and purpose, regard being had to the fact that these terms are 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 by the counsel or litigant is to be noted.
- (v) Lack of *bona fides* imputable to a party seeking condonation of delay is a significant and relevant fact.

(vi) Adherence to strict proof should not affect public justice and cause public mischief because the courts must 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, behaviour, and attitude of a party relating to its inaction or negligence are relevant factors to be considered. It is so as the fundamental principle is that the courts must weigh the scale of the balance of justice regarding 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 litigation.

(xi) No one should get away with fraud, misrepresentation, or interpolation through technicalities of the law of limitation.

(xii) The entire gamut of facts is 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.*

(italics supplied)

20. Then, *Esha Bhattacharjee* has added these principles, too:

“(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.

(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.

(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.

(d) 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.”

21. On facts, in *Esha Bhattacharjee*, the respondents pleaded that they were not aware of the order passed by the single Judge until they received the notice of the contempt application. They also pleaded miscommunication between the counsel and the parties. This found favour with the High Court. But in appeal, the Supreme Court has observed that the plea of lack of knowledge really lacked *bona fides*, for they had knowledge. So it reversed the High Court’s findings on the delay.

22. In *Vithu Kalya Govari*, a Division Bench of this Court, per Swatanter Kumar C.J., has noticed that the State filed the appeal with two years’ delay. The State, to have the delay condoned, pleaded "official hassle" and tardy approvals at different levels. Then, this Court has held that “this is a case which can hardly justify condonation of delay”. The hassles which, in any case, remained unspecified in the application could have always been set right by the applicants, and the approvals could have been secured expeditiously. Though the Court dismissed the State's delay condonation petition, it has issued certain guidelines to the State to be followed. Those guidelines aim to minimise governmental delays.

23. If we observe, in *Pundlik Jalam Patil* the petitioner lost his claim to the Court's discretionary remedy because of the incorrect statement he made in the application seeking condonation of delay. In *Living Media India*, despite opportunity given, the petitioner could not provide better reasons for the delay. The Court has found that from day one the Department or the persons concerned have not evinced diligence in prosecuting the matter. In *Maniben Devraj Shah*, the Court has found the "cause shown by the Corporation ... , to say the least, wholly unsatisfactory". Then, in *Esha Bhattacharjee*, the Supreme Court has disbelieved the plea that the petitioner did not know of the judgment; the record refuted that assertion. Besides, in *Vithu Kalya Govari*, the State pleaded "official hassle" and tardy approvals at different levels. So, this Court has held that "this is a case which can hardly justify condonation of delay".

24. In this case, to explain the delay in its filing the Appeal, the Government detailed the day to day file movement in the official hierarchies. Red tape, agreed. But it is a fact that cannot be wished away. Then, there arose a dispute about which Department should handle the case, for the jurisdiction of Village Cavelossim 'presently' is with WD- VI, PWD. In fact, paragraphs 7 and 8 of the application for the condonation of delay tediously describe the whole rigmarole of procedure and file pushing in the official corridors. But, that said, we find "no gross negligence or deliberate inaction or lack of *bona fides*" on the Government's part as described in *Living Media India*.

Conclusion:

25. All is said and done, the delay condonation is a question of judicial discretion but with no room for whim or caprice. That exercise of discretion must be informed by reason. In a court's exercising this discretion, myriad factors go into it. Unquestionable is the precedential force, but each decision depends on the facts it has been founded on. The case holding—that is the

happy combination of fact and the law—rather than an extracted legal principle divorced of factual background, ought to be the guiding factor.

| 26. Here, on facts, I may note that the State filed the appeal with a delay of 261 days. It has set out the causes that have led to the delay. If we avoid Sherlock Homean approach, the cause shown for the delay is probable and persuasive, too. Nothing specious do I find in the State's explanation of the delay. In the absence of *mala fides* and deliberate dereliction on the State's part, I reckon the delay needs to be condoned. And it is condoned.

Result:

For the reasons mentioned above, I condone the delay of 261 days and direct the Registry to number the appeal.

DAMA SESHADRI NAIDU, J.

AP/-