

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

**WRIT PETITION NO.380/2020**

Sau. Nirmala Prakash Gawande and others

**...Versus...**

Shridhar Madhukarrao Naik and others

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Office Notes, Office Memoranda of Coram,  
appearances, Court's orders or directions  
and Registrar's orders  
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Court's or Judge's orders

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Shri S.M. Vaishnav, Advocate for petitioner.  
Shri Vijaykumar Paliwal, Advocate for respondent no.4  
Ms A.R. Kulkarni, A.G.P., for respondent no.8  
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**CORAM : ANIL. S. KILOR, J.**

**DATE : 21/09/2020**

Hearing was conducted through Video Conferencing and the learned counsel agreed that the audio and visual quality was proper.

2. Denial to condone delay of 130 days by the learned District Judge, Achalpur in Misc. Civil Application 84/2015, in filing proceeding challenging the judgment and order dated 17/04/2015 passed by the Joint Charity Commissioner, Amravati, dismissing the appeal and upholding the legality of the order passed by the Assistant Charity Commissioner, allowing the change report vide order dated 30/08/2012.

3. Heard Shri Vaishnav, learned counsel for the petitioner and Shri Vijaykumar Paliwal learned counsel for respondent No.4. The

respondent Nos. 1 to 3, 5 and 7 are though served, none appears.  
Ms A.R. Kulkarni, learned A.G.P for respondent No.8.

4. Shri Vaishnav, learned counsel for the petitioners submits that in Misc. Civil Application before learned District Judge, in the application for condonation of delay, sufficient reason was given in para No.3 which has not been considered by the learned District Judge. He submits that it is a well settled law that the Court shall take liberal and adopt pragmatic approach in the matter of condonation of delay. For this purpose, he has placed reliance on the judgment of the Hon'ble Supreme Court of India in the case of *Esha Bhattacharjee Vs. Managing Committee of Raghunathpur Nafar Academy and others reported in (2013), 12, SCC 649* and judgment in the case of *S. Ganesharaju (dead) through LRS and another Vs. Narasamma (dead) through LRS and others reported in (2013), 11, SCC 341*.

5. Per contra Shri Paliwal learned counsel for the respondent no.4 strongly opposed the present petition and points out that the learned District Judge had granted an opportunity to the petitioners to lead evidence vide order dated 02/07/2018. However, that opportunity did not avail by the petitioners and therefore, according to him though the learned District Judge tried to adopt liberal and pragmatic approach, the petitioners failed to

show bonafide and as such rejection of application for condonation of delay is just and proper.

6. Ms A.R. Kulkarni, learned A.G.P adopt the argument made by Shri Paliwal, learned counsel for respondent No.4 and opposed the present petition.

7. The record depicts that the change report No.871/2012 filed by the respondents was allowed on 30/08/2012 on a consent given by the petitioners to the said change report. However, subsequently, appeal had been filed challenging the said report. While passing the judgment and order dated 17/04/2015, the learned Joint Charity Commissioner in para No.10 of the same has observed thus.

*“10. In order to satisfy myself and in order to avoid allegations and counter allegations made by the appellants and respondents. I had called advocate Shri N.G. Paradsinge, practicing in the office of Joint Charity Commissioner, Amravati in presence of both the advocates and asked to verify the pursis filed on record. After going through Exh.5, he has submitted that, the signatures shown at Exh.5 belong to him and the signatures were made by all the appellants in his presence. In view of this pursis there is no substance in the allegations made by the appellants and this fact is also corroborated from Exh.15 which is filed on record i.e. another pursis filed by the appellants explaining that they were misguided and their objection is baseless. In view of this pursis and unsatisfactory explanation came on record I come to the conclusion that there is no merit and substance in the appeal but present appeal is an attempt to misrepresent the Court to keep litigation continues.”*

8. The petitioners thereafter preferred an application under

Section 72 of the Bombay Public Trust Act. However, because there was a delay of 130 days, application for condonation of delay under Section 5 of the Limitation Act had been preferred. According to the petitioners, the sufficient cause which is the pre-requisite for condonation of delay under Section 5 of the Limitation Act, the same has been shown in para 3 of the application. Para 3 of the application read thus:

*“3. That the husband of applicant no.2 is president of the said Trust and due to his ill health and due to his accident he has not contacted with his counsel within time and therefore, applicant have not prepared the appeal and presented before Hon’ble Court within time. That, applicants have to filed the appeal within one month of impugned judgment i.e. till 16.05.2015 excluding the days of certified copies.”*

9. The learned District Judge, while dismissing the said application vide order dated 27/08/2019, has mentioned about the opportunity given to the petitioner to lead evidence in the said proceeding. Para 4 of the said order reads thus.

*4. By an order dated 02.07.2018, applicants were directed to file pursis as to whether they desire to lead evidence. The applicants did not file pursis nor adduced any evidence.*

10. The Hon’ble Supreme Court of India in the case of *S. Ganesharaju (dead) through LRS and another Vs. Narasamma (dead) through LRS and others (Supra)*, has held thus.

*“14. We are aware of the fact that refusal to condone delay would result in foreclosing the suitor from putting forth his cause. There is no presumption that delay in approaching the court is always deliberate. In fact, it is always just, fair*

and appropriate that matters should be heard on merits rather than shutting the doors of justice at the threshold. Since sufficient cause has not been defined, thus, the courts are left to exercise a discretion to come to the conclusion whether circumstances exist establishing sufficient cause. The only guiding principle to be seen is whether a party has acted with reasonable diligence and had not been negligent and callous in the prosecution of the matter. In the instant case, we find that the appellants have shown sufficient cause seeking condonation of delay and the same has been explained satisfactorily”

11. In the case of *Esha Bhattacharjee Vs. Managing Committee of Raghunathpur Nafar Academy and others (Supra)* the Hon’ble the Supreme Court of India, has held thus :

“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.”

12. There is no dispute that liberal, pragmatic, justice-oriented, non- pedantic approach should be taken while dealing with the application for condonation of delay. There is also no doubt that Substantial justice being paramount and pivotal the technical considerations should not be given undue and uncalled for emphasis.

13. However, at the same time Lack of bona fides imputable to a party seeking condonation of delay is a significant and relevant fact. The concept of liberal approach has to encapsulate the concept of reasonableness and it cannot be allowed a totally unfettered free play. Moreover, 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. 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.

14. In the present matter, the learned Joint Charity Commissioner while dismissing the appeal has observed in clear terms that the filing of the appeal is an attempt made on the part of the petitioner to misrepresent the Court and to keep litigation continues.

15. Furthermore, the conduct of the petitioners in not giving any justifiable reason or showing sufficient cause as regard what prevented the petitioner Nos. 1 and 3 to 6 to contact the lawyer of their choice and file appropriate proceeding under Section 72 of the Act of 1950, except for the reason that the husband of the

petitioner No.2 was ill and she was not in a position to contact the lawyer.

16. Casualness of the petitioners does not end there, but after the opportunity was granted by the learned District Judge in Misc. Civil Application No. 84/2015 to lead evidence, the petitioners did not adduce any evidence and thereby refused to avail the said opportunity. Had the petitioner led evidence and availed the said opportunity granted by the learned District Judge, the result might have been different.

17. It is pertinent to note here that the term of the office of managing body of the trust is of five years and after the change report filed in the year 2012, which the petitioners are seeking to challenge in case the delay is condoned, another change report was filed in the year 2018 and as per the statement made by Shri Paliwal, learned counsel for the respondent, the said change report of 2018 has already been allowed by the Joint Charity Commissioner. Shri Vaishnav, learned counsel for petitioners is not in position to make any statement about the same, in absence of instructions.

18. In the light of above observations as observed by the Hon'ble Supreme Court of India that the conduct, behaviour and attitude of a party relating to its inaction or negligence are

relevant factors to be taken into consideration and it is so as the fundamental principal is that the court are required to weigh the scale of balance of justice in respect of both the parties and the said principle cannot be given a total go by in the way of liberal approach from the facts of the present case, I have no hesitation to hold that the present case is not a fit case to adopt a liberal approach.

19. Moreover, I am of the considered view that since the another change report is filed and the period of the managing body which was managing the trust in view of the acceptance of the change report No.871/2012, is over. In the circumstances, at this stage, allowing this petition would be of no use and it may cause prejudice to the other party.

20. In the circumstances I am of the opinion that there is no merit in the present petition and it deserves to be dismissed. Accordingly, the writ petition is dismissed. No order as to costs.

21. It is made clear that the observations made in the present matter is that only in respect of change report No.871/2012 and the findings given in the present matter would not come in the way of petitioner in the subsequent change report.

**JUDGE**