

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

907 CRIMINAL APPLICATION NO.523 OF 2019
IN
CRIMINAL REVISION APPLICATION [STAMP]
NO.51 OF 2019

...
VISHAL S/O.SATYANARAYAN VISHWAKARMA
VERSUS
SONIYA W/O.VISHAL VISHWAKARMA & ANOTHER

...
Mr.Ujwal S.Patil, Advocate for the applicant.
Mr.U.L.Telgaonkar, Advocate for the
respondent no.1.
Mr.S.N.Morampalle, APP for the respondent-
State.

...
CORAM : V.L.ACHLIYA,J.
DATE : 19.01.2021

P.C.

1] The applicant has moved this application seeking condonation of 68 days delay in filing revision application for the reasons set out in detail in the application.

2] Heard learned counsel for the applicant and the counsel representing the respondents.

3] In brief, it is the contention of the learned counsel for the applicant that delay caused in filing revision application

cannot be termed as deliberate and intentional. It is submitted that the impugned order passed is *ex parte*. The applicant had no knowledge of order passed. After the applicant got knowledge of the order passed, the revision application has been filed. It is submitted that delay has been caused also for the reason that the applicant was wrongly advised to file appeal against impugned order. Later on advised to revision petition. After securing legal advice, the applicant has presented this revision petition. In the process, delay of 68 days has been caused in filing the revision application. In this background, learned counsel submits that 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.

4] On the other hand, learned counsel for the respondent no.1 opposed the application with contention that no sufficient cause has been shown to condone delay. It is submitted that the reasons assigned are false and concocted. By referring the observations made in the

impugned order, learned counsel submits that notice was duly served upon the applicant. After service of notice, the applicant had engaged advocate to appear in the matter and failed to file *Vakalatnama*. The Court has proceeded to the case as it was noticed that the applicant was deliberately avoiding to appear before the Court. It is further submitted that the revision application filed by the applicant is not maintainable in view of the remedy provided under Section 126 (2) of the Criminal Procedure Code to approach the Court concerned for setting aside the order.

5] On due consideration of the submissions advanced in the light of unchallenged and uncontroverted pleadings made in the application assigning reasons for condonation of delay, I am of the view that delay deserves to be condoned. The issue of maintainability can be decided while considering the admission of the revision application. Thus, keeping the issue of maintainability of the revision application open, I am inclined to condone the delay in filing revision petition. The prejudice, if any, caused to the respondents on account of

delay can be compensated in terms of money. Hence the application is allowed subject to deposit of cost of Rs.5,000/- to be payable by the applicant to the respondents within two weeks from the date of this order.

6] On payment of cost, the Revision Application be registered and placed for admission.

7] Criminal Application is disposed of in above terms.

8] Stand over to 16.02.2021.

[V.L.ACHLIYA]
JUDGE

DDC