

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

CIVIL REVISION APPLICATION NO. 53 OF 2020

Vasant s/o Manohar Chere ...Applicant

Versus

Laxman s/o Manohar Chere and Ors. ...Respondents

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Mr. Jayant R. Patil, Advocate for Applicants

Mr. Dr. R.R.Deshpande, Advocate holding for

Mrs. Priyanka R. Deshpande, Advocate for Respondents No.
1, 2 and 7

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CORAM : R. G. AVACHAT, J.

DATE : 16-02-2021.

ORDER :

01. The challenge in this revision application is to the Order dated 23.1.2020 passed by District Judge-1, Ahmedpur allowing the application for condonation of delay in preferring the appeal against decree.

02. The applicant herein is the original respondent in the M.C.A. (12/2019) before the learned District Judge. The respondents No. 1 and 2 had preferred the application, 12/2019 seeking condonation of delay occurred in preferring appeal against Judgment and decree passed in a suit R.C.S. No. 307/2015.

03. The learned District Judge on hearing the parties to the application condoned the delay subject to cost of Rs.5,000/-. The said Order is under challenge in this application.

04. Mr. J.R.Patil, the learned counsel for the applicant would submit that the impugned order does not contain reasons for condonation of delay. Although each and everyday's delay need not be explained meticulously, a case has to be made out for condonation of delay. He, therefore, urged for setting aside the impugned order.

Mr. R.R.Deshpande, the learned counsel for the contesting respondents would, on the other hand, submit that the parties to the application are relatives of each other. These respondents even could not appear in the suit in time. There were talks of compromising the matter. Even the terms of compromise were inked. The application for condonation of delay contained the reasons. The learned District Judge considered the same and allowed the application.

05. The Apex Court in the case of *Collector, Land*

Acquisition Anantnag and another vs. Mst. Katiji and others reported in **AIR 1987 SC 1353**, has observed thus:

"3. The legislature has conferred the power to condone delay by enacting S.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 appeal late.

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 considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice 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."

06. The learned District Judge has observed in his order that there was no intentional delay in preferring the appeal. The District Judge has considered the reasons given in the application for delay condonation. This Court in exercise of revisional jurisdiction do not find the impugned order to be illegal or materially irregular. Same, therefore, does not deserve to be interfered with. The application, therefore, fails. The same is dismissed.

[R.G.AVACHAT]

JUDGE

Dahibhate/-