

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

916 CIVIL APPLICATION NO.4687 OF 2021
IN RAST/9315/2021 WITH CA/7925/2020 IN RAST/19179/2020

M/S. GANESH GINNING FACTORY THROUGH ITS PROPRIETOR
VERSUS
THE UNION OF INDIA AND ANOTHER

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Mr. R.M. Sharma, Advocate for the applicant.
Mr. Alok Sharma, Advocate for respondent No.2.

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CORAM : **N.J. JAMADAR, J.**

DATE : 23rd April 2021.

PER COURT :

1. This application is preferred to condone the delay of 14 years and 5 months in filing Review Application in Writ Petition No. 6996 of 2005.
2. The applicant had preferred Writ Petition No. 6995 of 2005 assailing the order passed by the Presiding Officer, Employees Provident Fund Appellate Tribunal, New Delhi dated 30th August 2005 in Appeal No. 390 (9)/2004, whereby the condition of deposit of 75% of the demand levied by respondent No. 2 - Assistant Provident Fund Commissioner, was relaxed subject to deposit of 40% of the said amount.
3. By an order dated 18th October 2007, a learned Single Judge of this Court was persuaded to dismiss the writ petition as this Court was of the view that the offer made by the petitioner to deposit a sum of Rs. 1,00,000/- against the demand

of Rs. 34,42,000/- was not *bona fide*. The Court had also recorded that even if the case of the petitioner is taken at par, 75% of the due amount would come to Rs.8,00,000/-.

4. The applicant now seeks to review the said order dated 18th October 2007. In the application for condonation of delay two reasons are sought to be ascribed. One, Mr. A.J. Mantri, the then Counsel for the petitioner - applicant had not informed the petitioner about the outcome of the said petition and the order dated 18th October 2007 passed therein. Secondly, the petitioner met with an accident and suffered severe injuries. The petitioner was, thus, not in a position to pursue the matter. Copies of the medical certificate dated 15 August 2005 and disability certificate issued on 23 February 2011 are annexed to the application.

5. Heard Mr. Sharma, the learned Counsel for the applicant. Mr. Sharma would urge that the applicant was prevented by a sufficient cause from not seeking review of the order dated 18th October 2007 passed by this Court in Writ Petition No.6995 of 2005. It was urged that the circumstances were beyond the control of the applicant. The learned Counsel who represented the applicant in Writ Petition No. 6995 of 2005 had not apprised the applicant about the dismissal of the said writ petition. In these circumstances, the delay deserves to be condoned by taking a liberal view of the matter, urged Mr. Sharma.

6. It is trite that an application for condonation of delay should receive liberal consideration. Invariably the Courts lean in favour of condonation of delay so as to advance the cause of substantive justice. The pivotal consideration is that a lis should be decided on merits rather than on technicalities. From this standpoint, the length of delay is not the determinative factor but the cause assigned for the delay. The term 'sufficient cause' is, thus, construed liberally and the delay is condoned when there is no element of negligence, deliberate inaction or want of *bona fide*.

7. In the case at hand, this Court finds that the reasons ascribed by the applicant for condonation of delay are not worthy of acceptance. The time lag of 14 years 5 months is inordinate by any standard. It does not appeal to human credulity that the applicant would have missed to ascertain the position of the writ petition when the applicant had filed appeal before the Appellate Tribunal challenging the demand of dues towards the provident fund contribution. The submission that the Counsel did not inform the fate of the writ petition and the order passed by this Court on 18th October 2007, appears specious. It is imperative to note that the writ petition came to be dismissed as the petitioner – applicant had offered to make a deposit of Rs. 1,00,000/- only against an outstanding demand of Rs. 34,42,000/-. The petitioner was thus very much involved in the proceeding then transpired before the Court. In any event,

failure to ascertain the fate of the said petition for 14 long years is nothing but a deliberate inaction.

8. Even the ground of disability of the applicant doesn't advance cause of the applicant.

9. The certificates indicate that the applicant had suffered injury in the year 2005. The applicant had, thus, suffered injury even before institution of Writ Petition No. 6995 of 2005, which came to be dismissed on 18th October 2007. The said ground, in the circumstances of the case, cannot be pressed into service to condone the delay of 14 years.

10. For the foregoing reasons, this Court does not find any justifiable reason to condone the delay in seeking review of the order dated 18th October 2007.

11. Hence, the Civil Application No. 4687 of 2021 stands rejected.

12. In view of rejection of Civil Application No. 4687 of 2021, the Civil Application No. 7925 of 2020 does not survive and accordingly stands disposed of.

(N.J. JAMADAR, J.)