

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

CIVIL APPLICATION NO. 10822 OF 2017  
IN  
FIRST APPEAL ST.NO. 24540 OF 2017

Madhubala w/o Chandrakant Misal  
and anr.

.. Applicants

Versus

Renuka w/o Rahul alias Dada Mane and ors.

.. Respondents

Mr K.S. Kshirsagar, Advocate for applicants - absent  
Mr S.A. Wakure, Advocate for respondents no.1 to 4

**CORAM : SHRIKANT D. KULKARNI, J.**

**DATE : 22nd January 2021**

**PER COURT :**

1. It is an application for condonation of delay moved by the applicants by taking aid of Section 5 of the Limitation Act, 1963.
2. None present for the applicants when the matter is called out repeatedly.
3. Heard Mr S.A. Wakure, learned Advocate for respondents no.1 to 4/original applicants. None present for respondent no.5.
4. Perused the record. By looking to the nature of application for condonation of delay, I thought it just and proper to decide the same on its own merits.
5. There seems to be delay of 1300 days in preferring the first appeal against the judgment and award dated 30.10.2013 passed by the Commissioner for Employees Compensation and Civil Judge, Senior Division, Osmanabad in W.C.A. No.15 of 2010.

6. The reasons assigned in the application for condonation of delay are not at all sufficient. The prayer for condonation of delay cannot be allowed. In case of **Esha Bhattacharjee Vs. Managing Committee of Raghunathpur Narfar Academy and ors.** reported in **(2013) 12 SCC 649**, the Hon'ble Supreme Court has laid down principles to deal with application for condonation of delay, which are as under :

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.

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.

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 on the part of the counsel or litigant is to be taken note of.

v) Lack of bona fides imputable to a party seeking condonation of delay is a significant and relevant fact.

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.

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 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.

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.

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.

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.

xiii) The State or a public body or an entity representing a collective cause should be given some acceptable latitude.

xiv) An application for condonation of delay should be drafted with careful concern and not in a haphazard 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.

xv) 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.

xvi) 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.

xvii) 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."

7. There is no merit in the application for condonation of delay. As such, application stands rejected.

**( SHRIKANT D. KULKARNI, J.)**

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