

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

CIVIL APPLICATION NO. 1803 OF 2017
IN
FIRST APPEAL ST.NO. 31670 OF 2016

Taramatibai Kundlikrao Wagh ..Applicant

Versus

The State of Maharashtra and ors. ..Respondents

Mr A.T. Ghute, Advocate for applicant - absent

Mr S.G. Bhalerao, Advocate for respondent no.3 - absent

CORAM : SHRIKANT D. KULKARNI, J.

DATE : 22nd January 2021

PER COURT :

1. None present when the matter is called out.
2. By looking to the old nature of application for condonation of delay, I thought it just and proper to decide the same on its own merits.
3. There seems to be delay of 3477 days.
4. Perused the record. The applicant, a lady intends to prefer first appeal feeling aggrieved by the judgment and award dated 4.1.2007, passed by the learned Ad-hoc District Judge-2, Parbhani in L.A.R. No.53 of 2000.
5. The reasons assigned for condonation of delay by the applicant are that she being an illiterate and old aged lady could not remain in touch with her Advocate. Her Advocate also did not communicate her about the decision of the District Judge and ultimately, resulted into inordinate delay.
6. Section 5 of the Limitation Act, 1963 speaks about the condonation of delay. 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 dispute that liberal, pragmatic and justice-oriented approach shall be taken while dealing with application for condonation of delay. The Courts are not supposed to legalise injustice but are obliged to remove injustice.

8. Having regard to the guidelines laid down by Hon'ble Supreme Court in case of **Esha Bhattacharjee Vs. Managing Committee of Raghunathpur Narfar Academy and ors.** (supra), if reasons assigned in the application for condonation of delay are taken into consideration, those cannot be said to be sufficient in the eye of law. The applicant has failed to assign sufficient reasons for condonation of delay as contemplated under Section 5 of the Limitation Act, 1963. There is no merit in the application. Hence, the application for condonation of delay stands rejected.

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

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