

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION NO.619 OF 2018

Gopal Laxman Rajendra,]
R/at: Rajendra Chawl, in front of]
Police Station, Nashik Road, Nashik.] ... Applicant

Versus

1. The Municipal Corporation of]
City of Nashik.]
2. The Commissioner,]
The Municipal Corporation of]
City of Nashik.]
3. Estate Manager,]
Nashik Municipal Corporation,]
Above all office at Nashik]
Municipal Corporation, Rajiv]
Gandhi Bhavan, Sharanpur Road,]
Nashik. Respondent No.3 for]
himself and on behalf of]
Respondent Nos.1 and 2.] ... Respondents

...

Mr. Girish R. Agrawal for the applicant.

Mr. Subhash V. Gutte for respondent Nos.1 to 3.

...

CORAM : SMT. BHARATI DANGRE, J.

DATED : 05TH OCTOBER, 2021.

ORAL JUDGMENT:-

1. The applicant is aggrieved by the order dated 26/06/2018 passed by the District Judge-10, Nasik in Civil Misc. Application No.151 of 2015 instituted by the Municipal Corporation of City of Nasik and two others. The order is passed in an application seeking condonation of delay in preferring appeal against judgment and order dated 23/08/2012 by the 6th Joint Civil Judge, Senior Division, Nasik in Regular Civil Suit No.313 of 2011.

2. By the said application, a relief was sought to condone the delay of 2 years, 8 months and 16 days in preferring the appeal. By the impugned order, learned District Judge has condoned the delay on being satisfied with the reasoning stated in the application and by recording that the delay appears to be “probable and acceptable” and it has been explained by setting out the sufficient reasons. The court records that the delay of 2 years, 8 months and 16 days is not intentional, but accidental and, therefore, to afford a fair opportunity and to enjoy the right of appeal the delay deserves to be condoned.

3. The brief background and the impugned order would reveal that the applicant had filed a regular civil suit for recovery of possession of suit property or alternatively seeking a declaration that the act of Nashik Mahanagar Palika acquiring the suit property without payment of compensation is illegal. He sought compensation as per the current market rate. The civil court settled the issues and the burden was cast on the plaintiff to prove that he is entitled for possession of the suit property or compensation for damages and on the issue whether the defendants have proved that in the year 1984, the plaintiff delivered the suit property to them voluntarily and without consideration, the issue has been answered partly in the affirmative. By the judgment and order dated 23/08/2012, the following order is passed:

“1. The Suit is decreed. No order as to costs.

2. Defendants are directed to consider and grant compensation or release TDR to the plaintiff within six months, after compliance of all necessary formalities by the plaintiff.

3. Decree be drawn up, accordingly.”

4. Being aggrieved by the said judgment, the Municipal Corporation of City of Nashik preferred an appeal in the year 2015 along with an application for condonation of delay seeking to condone delay of 2 years, 8 months and 16 days in preferring

the appeal. The scantily drafted application states that the delay has occurred on account of administrative reasons on the part of the applicant. Relevant portion of paragraph 3 of the application reads as under:

“3) The applicant submits that the said delay has occurred due to some administrative reasons of the office of the applicant. The decision was communicated to the Court Department of the appellant and they forwarded the certified copies to the Estate Department for necessary action. However, there were certain changes in the office of Estate Manager and also transfer of Estate Manager and the post was vacant for a long period and the said work was being looked after by incharge person. At the same time in this period the certified copies were not traceable. When the copies were traced, it was brought to the notice of Estate Manager who immediately after going through the judgment and decree proposed an appeal, and accordingly, file was put up for necessary approval for filing an appeal before Hon’ble Commissioner, NMC, Nashik and in this process the time is lost in obtaining approval. The Hon. Commissioner gave approval for filing appeal. Then thereafter the time is again lapsed for sanction and approval of the required Court fee stamp for the purpose of filing appeal. The delay in filing appeal is unintentional and there is sufficient reasonable cause for condonation of the same.”

5. The prayer made in the application was opposed by the

present petitioner. In ignorance of the said opposition, the application came to be entertained by the appellate court by recording that there are sufficient reason for not preferring the appeal against the impugned judgment within the period of limitation and the reasoning of the learned Judge is to be found in paragraph 8, which reads thus:

“8. Along with the application, petitioner Bhaskar Uddhavrao More, Estate Manager, Nashik Municipal Corporation had filed his affidavit at Exh.3. After considering the material placed on record on behalf of the petitioners, I feel that there were sufficient reasons to the petitioners for not to prefer appeal within the stipulated period of limitation as the appellant is a public institution. At this stage, there is no record indicating that on the day of decision of the suit the petitioners were present before trial Court and they were well aware regarding decision of the suit on the date of decision only. The petitioners is a public institution. The reasons set forth by the petitioners in this application for condonation of delay appears to be probable and acceptable. The petitioners have explained the delay by making out sufficient reasons in preferring appeal. Considering the application and affidavit of petitioners, I feel that there were sufficient grounds to petitioners for not to prefer appeal against that judgment and decree within stipulated period of limitation. The delay of 2 years, 8 months and 16 days caused in preferring appeal is not intentional but it appears to be accidental. To have fair

opportunity and to enjoy the right of appeal, the delay caused in preferring appeal against that judgment and decree is required to be condoned in the interest of justice. The application deserves to be allowed subject to payment of costs to opponents.”

6. It is, no doubt, true that justice to a party cannot be defeated merely on the ground of delay. However, one cannot forget the Limitation Act, which prescribes the period within which an action can be instituted. The power to condone the delay and permit the claim to be entertained, no doubt, has to be construed liberally, but the rhetoric delay being on account of administrative reason must receive a rebuke. Gone are those days, when the officers used to say that the file was required to be moved from one table to another and one officer to another and this caused the delay. With the advancement of technology and when the officers of the Government and other authorities specifically the respondent-Corporation, are well equipped with the assistance of the Law Officers, this travelling of files from one table to other can no longer be considered as an excuse. The casual manner, in which the Government / Semi-Government Departments function and come up with the lame excuses has to be deprecated and this is what the Hon'ble Apex Court in its judgment in the case of **State of Uttar Pradesh & Ors. v. Sabha Narain & Ors.** reported in **2021 (1) Civil Court Cases 800 (SC)**, has done by recording that in absence of cogent and plausible ground, the application for condonation of delay would

only prove the lethargy and incompetence of the Government Departments. Their Lordship of the Apex Court has held as under:

*“We have repeatedly discouraged State Governments and public authorities in adopting an approach that they can walk in to the Supreme Court as and when they please ignoring the period of limitation prescribed by the Statutes, as if the Limitation statute does not apply to them. In this behalf, suffice to refer to our judgments in the State of **Madhya Pradesh & Ors. v. Bheru Lal** [SLP [C] Diary No.9217/2020 decided on 15.10.2020] and **The State of Odisha & Ors. v. Sunanda Mahakuda** [SLP [C] Diary No.22605/2020 decided on 11.01.2021]. The leeway which was given to the Government/public authorities on account of innate inefficiencies was the result of certain orders of this Court which came at a time when technology had not advanced and thus, greater indulgence was shown. This position is no more prevalent and the current legal position has been elucidated by the judgment of this Court in **Office of the Chief Post Master General & Ors. v. Living Media India Ltd. & Anr.**, 2012(2) Civil Court Cases 001 (S.C.) : 2012(1) Apex Court Judgments 646 (S.C.) : 2012 (3) SCC 563. Despite this, there seems to be a little change in the approach of the Government and public authorities.*

7. The observations of the Apex Court in the case of **Amalendu Kumar Bera & Ors. v. State of West Bengal** reported in **(2013) 4 SCC 52** have amply illustrated the term

‘sufficient cause’ as the one, which should be considered with pragmatism in justice oriented approach rather than technical detection. However, in paragraph 10, Their Lordships have observed as under:

“10. Curiously enough in the application for condonation of delay no sufficient cause has been shown which would entitle the respondent to get a favourable order for condonation of delay. True it is, that courts should always take liberal approach in the matter of condonation of delay, particularly when the appellant is the State but in a case where there are serious laches and negligence on the part of the State in challenging the decree passed in the suit and affirmed in appeal, the State cannot be allowed to wait to file objection under Section 47 till the decree-holder puts the decree in execution.”

8. Absence of “sufficient cause” contemplated under Section 5 of the Limitation Act would cast a burden upon the party, who approaches the court seeking condonation of delay. The distinction between the party being a Government Department or a Government itself and a private litigant cannot be made out and though the courts are expected to take a liberal view in condoning the delay, the least expected is that the State shall come up with some plausible or satisfactory explanation which, surely should fall short of negligence or lethargy on part of the Department or its officers.

9. When the present application is perused by which the respondent-Corporation has sought condonation of delay, it just depicts a perfunctory approach of the officers of the Department with an assumption that merely throwing an excuse that delay has been accounted on part of administrative reason, the court is likely to be condone the delay. The explanation, which is tendered in paragraph 3, does not even make an attempt to explain the delay, but the reason stated is that there was a transfer of an officer and the post was vacant for a long time and the work was looked after by some other in-charge officer. The Government and its authorities must be treated as any other ordinary litigant and the due diligence on the part of the individuals to approach the court would apply with equal force to the Government and its officers. The habit of awakening out of slumber, one fine hour of the day and throwing jargon of scanty reason justifying the delay must be discouraged and, particularly, when the Government and its officers are in lis with its own citizens, since it is the fundamental duty of the State to protect the rights of the citizens. Such a callous approach on part of the Government and its officers has to be deprecated.

10. On perusal of the impugned order, it can be seen that the learned District Judge has also dealt with the application in a perfunctory manner and the application was allowed recording that the delay was not intentional but accidental and that the

applicant has shown sufficient cause, which is a necessary concomitant for condoning the delay under Section 5 of the Limitation Act. Such an approach on the part of the authorities and even on part of the court cannot be permitted at this hour of time, when the whole system is grappling with delay and arrears have choked the judicial system. The fact of delayed justice has driven all involved, to rethink about the court proceedings and to search better ways of getting justice. Not entertaining stale claims casually on the pretext of administrative convenience is one step, which will cleanse some dust on some files.

The impugned order, therefore, deserves to be quashed and set side since it does not take into account the proper and sufficient cause, which should have been established, before the delay was condoned.

11. The civil revision application is allowed in terms of prayer clause (b) of the application. No order as to cost.

[SMT. BHARATI DANGRE, J.]