

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**CIVIL APPLICATION NO.865 OF 2015
IN
FIRST APPEAL (STAMP) NO.34549 OF 2014**

Vimmi Shakeel Shaikh ... Applicant
V/s.
Mubeen Mohammed Sayed Khan ... Respondent

Mr.A.K.Chauhan with Mr.Rahul Chauhan for the Applicant.

Mr.Dharmesh Singh i/b Law Competere Consultus for the Respondent.

.....

CORAM: MADHAV J. JAMDAR, J.

DATE : 18TH SEPTEMBER, 2021

P.C:-

1. Heard Mr.A.K.Chauhan with Mr.Rahul Chauhan, learned Counsel for the Applicant and Mr.Dharmesh Singh, learned Counsel for the Respondent.
2. Civil Application is filed for condonation of delay of one year and 348 days in filing First Appeal. The impugned judgment and decree in S.C. Suit No.901 of 2010 was passed by learned Judge, City Civil Court, Mumbai on 4/12/2012. The present First Appeal is filed on 26/12/2014.
3. Mr.Chauhan, learned Counsel appearing for the Applicant submitted that the Applicant was falsely implicated in C.R.No.24/2012/LAC No.00/2012 investigatd by the Social Service Branch Mumbai for alleged offences punishable under sections 4, 5, 6, (3) A of PITA. He submitted that the Applicant was arrested in connection with said C.R on 17/10/2012 and she was released on bail on 2/11/2012. The Applicant was facing

investigation and reporting to Social Service branch Mumbai from time to time as per order dated 2/11/2012 by which she was released on bail. He submitted that the Applicant was attending the Court of Sessions, Mumbai and High Court in connection with various Applications/Writ Petition etc. relating to said criminal case. The Applicant was over burdened with multiple proceedings from January 2012 till November 2014 due to which she was unable to take corrective steps in the above matter.

4. Mr.Chauhan submitted that earlier Advocate of the Applicant had not furnished complete documents and though the Advocate had given no objection for engaging other Advocate, complete documents were not furnished to the Applicant due to which First Appeal could not be filed in time and therefore present Application is filed for condonation of delay in filing First Appeal. Mr.Chauhan, learned Counsel submitted that the delay is not deliberate but circumstantial. He submitted that due to multiple difficulties faced by the Applicant Appeal could not be filed within time.

5. On the other hand Mr.Dharmesh Singh, learned Counsel appearing for the Respondent submitted that factual position on record clearly shows that the Applicant was attending Magistrate Court, Court of Sessions, Mumbai and Bombay High Court in connection with various Applications/Writ Petitions relating to her criminal cases and therefore it is very clear that she could have filed First Appeal within time and therefore the application filed is not bonafide and is required to be dismissed.

6. Mr.Singh, learned Counsel relied upon the judgment of Hon'ble Supreme Court passed on 22/08/2013 in **Civil Appeal Nos.6974 and 6975 of 2013** in **Basawaraj and Ors. vs. The Special Land Acquisition Officer, [MANU/SC/0850/2013]**. He has relied on paragraphs 9, 10, 11 and 15 of

the said judgment. Mr.Singh, learned Counsel has particularly relied on following portion of paragraph 15 of the said Judgment :

“15. The application is to be decided only within the parameters laid down by this court in regard to the condonation of delay. In case there was no sufficient cause to prevent a litigant to approach the court on time condoning the delay without any justification, putting any condition whatsoever, amounts to passing an order in violation of the statutory provisions and it tantamounts to showing utter disregard to the legislature.”

7. Before considering the rival submissions it is necessary to set out legal position regarding delay condonation.

8. In the judgment reported in **(2013) 12 SCC 649** in ***Esha Bhattacharjee vs. Managing Committee of Raghunathpur Nafar Academy and Others***, the Supreme Court culled out various principles to be followed while deciding delay condonation application. The said principles are culled out on the basis various decisions of the Supreme Court. Relevant paragraph 21 is reproduced hereinbelow :

“21. From the aforesaid authorities the principles that can broadly be culled out are :

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 bonafides 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 encapsule 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.

9. The Supreme Court held that approach of the Court while dealing with delay condonation application should be liberal, pragmatic justice-oriented and non-pedantic. It is held that the term “sufficient cause” should be understood in proper spirit and said term is basically elastic and is to be applied in proper perspective to the obtaining fact-situation. It is further held that no presumption could be attached to deliberate causation of delay but, gross negligence is to be taken note of. Lack of bona fides imputable to a party seeking condonation of delay is a significant and relevant fact. It is further held that the conduct, behaviour and attitude of a party relating to its inaction or negligence are relevant factors to be taken into consideration.

As far as aspect regarding the explanation offered is concerned, the Supreme Court held that if the same is fanciful or concocted, the Courts should be vigilant not to expose the other side to face such a litigation.

10. The factual aspects of this case are required to be examined on the touchstone of the aforesaid principles culled out by the Supreme Court

11. Before dealing with contentions raised by both the parties, it is to be noted that present appeal is lodged on 26/12/2014. This Court by order dated 30/07/2015 passed in this Civil Application has issued Rule and made the same returnable after 12 weeks. The office note dated 19/10/2015 shows that sole Respondent was duly served. Thereafter as per the office record the above Civil Application was placed for hearing on number of occasions but could not be taken up due to paucity of time. On 21/08/2019, Civil Application was adjourned at the request of learned Advocate for the Applicant. At that time Mr. Dharmesh Singh, learned Counsel has appeared for the Respondent. Thus, it is clear that although sole Respondent is served on or before 19th October 2015, for last almost six years, no reply is filed to the Civil Application. Therefore, contentions raised in the Civil

Application have remained uncontroverted.

12. The contents of the Civil Application clearly shows that the Applicant was arrested in above referred criminal case on 17/10/2012 and she was released on bail on 2/11/2012. The impugned decree is passed on 4/12/2012. The contents of the Civil Application shows that various conditions were imposed while releasing the Applicant on bail. The Applicant has specifically stated in Civil Application that various conditions were imposed by order dated 2/11/2012 and one of the condition was that the Applicant was directed to report to Social Service branch, Mumbai. The contents of the Civil Application further shows that the Applicant was attending the investigation as per said order. It is further stated in Civil Application that she was attending the Magistrate Court/Court of Sessions, Mumbai and High Court in connection with various Applications/Writ Petitions relating to release of her passport, permission to go abroad and other issues arising out of said criminal case. She has stated that she was over burdened with multiple proceedings from January 2012 till November 2014 due to which she was unable to take steps for filing First Appeal in the above matter.

13. In the Civil Application another contention raised that although the Advocate had given no objection to engage another Advocate but had not furnished complete documents. As far as said contention is concerned, Mr.Singh, learned Counsel submitted that suit is decreed on 4/10/2012 and therefore there was no question of obtaining no objection from earlier Advocate. However, Mr.Chauhan, learned Counsel for the Applicant submitted that there was other litigation pending in the City Civil Court, Mumbai which was being looked after by earlier Advocate and, therefore, his no objection was taken. In any case contention that earlier Advocate had

not returned back papers will be relevant factor for the purpose of considering delay condonation application.

14. In any case it is required to be noted that very elaborate and sufficient reasons are given in the civil application. The reasons given are not false as details of criminal case and order passed by the Criminal Court are given. The Respondent has not filed any reply to this Civil Application and therefore the contentions raised in the Civil Application have remained uncontroverted. Thus, I find that there is no lack of bonafide which can be imputable to the Applicant.

15. Mr.Singh, the learned Counsel of the Respondent submitted that the factual position emerging from the contents of the civil application shows that the Applicant could get time to attend to various cases in Magistrate Court, Court of Sessions, Mumbai and High Court relating to her criminal case, but she was not getting time to file civil case. However it is to be noted that a person facing criminal case will obviously concentrate on said case in preference to the civil case. In the Civil Application, Applicant has specifically stated that she was attending the Magistrate Court/Court of Sessions, Mumbai and High Court in connection with various Applications/Writ Petitions relating to release of her passport, permission to go abroad and other issues arising out of said criminal case. The cases which are in the Magistrate Court/Sessions Court, Mumbai, High Court are relating to her personal liberty. Therefore no fault can be found with her for giving preference to those cases. The Applicant has stated in the civil application that she was over burdened with multiple proceedings from January 2012 till November 2014 due to which she was unable to take steps for filing First Appeal in the above matter. Thus there is no substance in the contention raised by the Applicant.

16. It is settled legal position that the decisive factor for condonation of delay is not the length of delay but sufficient and satisfactory explanation. The Supreme Court in **1998 (7) SCC 123** in the matter between **N. Balakrishnan vs. M.Krishnamurthy** held as under :

“9. It is axiomatic that condonation of delay is a matter of discretion of the court section 5 of the Limitation Act does not say that such discretion can be exercised only if the delay is within a certain limit. **Length of delay is no matter, acceptability of the explanation is the only criterion.** Sometimes delay of the shortest range may be uncondonable due to want of acceptable explanation whereas in certain other cases delay of very long range can be condoned as the explanation thereof is satisfactory. Once the court accepts the explanation as sufficient it is the result of positive exercise of discretion and normally the superior court should not disturb such finding, much less in reversional jurisdiction, unless the exercise of discretion was on whole untenable grounds or arbitrary or perverse. But it is a different matter when the first court refuses to condone the delay. In such cases, the superior Court would be free to consider the cause shown for the delay afresh and it is open to such superior court to come to its own finding even untrammelled by the conclusion of the lower court.

10. The reason for such a different stance is thus: The primary function of a court is to adjudicate the dispute between the parties and to advance substantial justice. Time limit fixed for approaching the court in different situations is not because on the expiry of such time a bad cause would transform into a good cause.

11. **Rule of limitation are not meant to destroy the right of parties. They are meant to see that parties do not resort to dilatory tactics, but seek their remedy promptly. the object of providing a legal remedy is to repair the damage caused by reason of legal injury.** The law of limitation fixes a life-span for such legal remedy for the redress of the legal injury so suffered. Time is precious and the wasted time would never revisit. During efflux of time newer causes would sprout up necessitating newer persons to seek legal remedy by approaching the courts. So a life span must be fixed for each remedy. Unending period for launching the remedy may lead to unending uncertainty and consequential anarchy. Law of limitation is

thus founded on public policy. It is enshrined in the maxim Interest reipublicae up sit finis litium it is for the general welfare that a period be putt to litigation. Rules of limitation are not meant to destroy the right of the parties. They are meant to see that parties do not resort to dilatory tactics but seek their remedy promptly. The idea is that every legal remedy must be kept alive for a legislatively fixed period of time.

12. **A court knows that refusal to condone delay would result foreclosing a suitor from putting forth his cause. There is no presumption that delay in approaching the court is always deliberate.** This Court has held that the words "sufficient cause" under Section 5 of the Limitation Act should receive a liberal construction so as to advance substantial justice vide *Shakuntala Devi Jain Vs. Kuntal Kumari* [AIR 1969 SC 575] and *State of West Bengal Vs. The Administrator, Howrah Municipality.*"

17. It is to be seen that although there is long delay of 1 year and 348 days, however, sufficient reasons are given for explaining the same. There is no reply affidavit filed by the Respondent for last about seven years. The Applicant has given necessary details i.e. crime C.R.No.24/2012/LAC No.00/2012 has been lodged against her and date of her arrest, date of her release on bail and conditions which are imposed on her while granting bail are mentioned. Therefore, this is not case where lack of bonafides can be imputable to the Applicant although delay is for 1 year and 348 days. Sufficient reasons are given which have remained uncontroverted as there is no reply filed by the Respondents. It cannot be said that the reasons given are fanciful or concocted. It is very important to note that the explanation offered by Applicant for delay caused is not false and there are no malafides which can be attributable to her.

18. Mr.Singh, the learned Counsel of the Respondent has relied on the judgment of ***Basawaraj and Ors.*** (supra). In the said judgment it has been held that :

“.... “sufficient cause” means that the party should not have acted in a negligent manner or there was a want of bona fide on its part in view of the facts and circumstances of a case or it cannot be alleged that the party has "not acted diligently" or "remained inactive". However, the facts and circumstances of each case must afford sufficient ground to enable the Court concerned to exercise discretion for the reason that whenever the Court exercises discretion, it has to be exercised judiciously. The applicant must satisfy the Court that he was prevented by any “sufficient cause” from prosecuting his case, and unless a satisfactory explanation is furnished, the Court should not allow the application for condonation of delay. The court has to examine whether the mistake is bona fide or was merely a device to cover an ulterior purpose.

The expression “sufficient cause” should be given a liberal interpretation to ensure that substantial justice is done, but only so long as negligence, inaction or lack of bona fides cannot be imputed to the party concerned, whether or not sufficient cause has been furnished, can be decided on the facts of a particular case and no straitjacket formula is possible.”

In the said judgment it is specifically held in paragraph 15 that the Application for delay condonation is to be decided only within the parameters laid down by Hon’ble Supreme Court in regard to condonation of delay. In case there was no sufficient cause to prevent a litigant to approach the court on time condoning the delay without any justification, putting any condition whatsoever, amounts to passing an order in violation of the statutory provisions and it tantamounts to showing utter disregard to the legislature. Thus, what Supreme Court has held that the Courts are not

justified in condoning delay without any sufficient cause shown by the party. In that context the Supreme Court has further held that delay condonation orders cannot be passed by imposing any condition, if sufficient cause is not shown.

19. As discussed elaborately, hereinabove there are sufficient reasons set out in the application and the reasons are not concocted or fanciful. The reasons given are genuine and no malafides can be attributable to the Applicant. Thus even if the facts of the present case are examined on the touchstone of law laid down in the said judgment of **Basawaraj and Ors.** on which the learned Counsel of the Respondent had relied then also the civil application deserves to be allowed.

20. The Supreme Court in case reported in **(2010) 5 SCC 45 Oriental Aroma Chemical Industries Ltd vs. Gujarat Industrial Development Corporation and Another** has observed that :

“14. The law of limitation is founded on public policy. The legislature does not prescribe limitation with the object of destroying the rights of the parties but to ensure that they do not resort to dilatory tactics and seek remedy without delay. The idea is that every legal remedy must be kept alive for a period fixed by the legislature. To put it differently, the law of limitation prescribes a period within which legal remedy can be availed for redress of the legal injury. At the same time, the courts are bestowed with the power to condone the delay, if sufficient cause is shown for not availing the remedy within the stipulated time.”

Thus if sufficient cause is shown the Courts are bestowed with the power to condone the delay. In spite of sufficient cause if delay is not

condoned the same will amount to destroying the rights of the parties. In this case sufficient cause is shown as set out hereinabove.

21. Thus this is a case where the Civil Application seeking delay condonation deserves to be allowed. In the present case, I find that sufficient cause is shown in the application, however, there is delay of 1 year 348 days and, therefore, the Respondent will suffer some hardship which will have to be compensated by payment of cost. Mr.Chauhan, learned Counsel on the basis of instructions from his client voluntarily stated that the Applicant is ready and willing to pay cost of Rs.50,000/- for compensating hardship of the Respondent.

22. For the reasons set out hereinabove, Civil Application is allowed by passing the following order :-

- (i) Civil Application is allowed in terms of prayer clause (a).
- (ii) The Applicant to pay cost of Rs.50,000/- to the Respondent. Mr.Chauhan, learned Counsel appearing for the Applicant undertakes to forward to Mr.Singh, learned Counsel for the Respondent pay order of Rs.50,000/- drawn in the name of the Respondent - Muben Mohammad Sayeed Khan within a period of four weeks from today.
- (iii) The Applicant/Appellant to file affidavit within a period of six weeks from today stating that said cost of Rs.50,000/- is paid to the Respondent.
- (iv) Office to register First Appeal only after filing of such affidavit and after complying with necessary requirements, if any.
- (v) Civil Application is disposed of in above terms.

[MADHAV J. JAMDAR, J.]