

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

INTERIM APPLICATION NO.1246 OF 2019

IN

REVIEW PETITION (L) NO.83 OF 2019

IN

WRIT PETITION NO.272 OF 2017

WITH

INTERIM APPLICATION NO.1851 OF 2019

Jagannath Maruti Sanas & Anr. .. Applicants/Petitioners

v/s.

M/s. Johnson & Johnson Ltd. & Ors. .. Respondents

Mr. M. T. Narvekar for the applicants/petitioners.

Mr. Sunny Shah i/b. Sujit Lahoti for respondent no.1.

Mr. Rajeev Singh a/w M/s. Sayeed Mulani & Co. for respondent no.2.

CORAM : A. K. MENON, J.

DATE : 22ND DECEMBER, 2021

P.C. .

1. This IA seeks condonation of delay of 552 days in filing this review petition. The review petitioners were not parties to the writ petition which came to be dismissed vide order dated 18th December, 2017. The review petitioners claim to be aggrieved by observations in paragraph 22 of that order which refers to some

members of the petitioners having filed a suit in the City Civil Court claiming injunction, declaration to the effect that there was no sale of the Permacel Andheri undertaking and restraining the original respondents Johnson & Johnson Ltd. from contending that the Permacel unit had been sold. The contention of the review petitioners is that they were plaintiffs in the City Civil Court but they were not members of the petitioner union and a fraud has been played upon this court misleading the court into recording that the suit was filed by members of the Union.

2. At the outset, I may observe that the order of which review is sought, was subject matter of Special Leave Petition filed in the Supreme Court by the original petitioner. The Special Leave Petition was dismissed on 3rd December, 2018. Thus the order under review has attained finality upon rejection of the SLP.
3. In this background, I have proceeded to hear the application for condonation of delay which is being opposed by the respondents. Respondent no.2 has filed an affidavit in reply dated 18th November, 2021. The applicants have filed a rejoinder dated 2nd December, 2021. The review was first moved on 16th January, 2020 when the issue of maintainability was raised. Thereafter the

matter came to be adjourned on 11th March, 2020. The applicants Advocate being unavailable, the matter was adjourned to 24th March, 2020. The lock-down thereafter caused the matter to remain pending. On 28th October, 2021 respondents made a grievance that the above interim application seeking condonation of delay had not been served upon them. Accordingly, pleadings have since been completed and I have heard the matter.

4. Mr. Narvekar, the learned counsel for the applicants submitted that in fact there is no delay. However, assuming there is delay, it would be of 552 days. In support of his contention, he submitted that although the judgment and order in the writ petition was passed on 18th December, 2017, the applicants not being parties were unaware of the same. They came to learn of it only on 16th April, 2018 when the 2nd respondent in the Writ Petition viz. M/s. PRS Permacel Private Ltd. who is also defendant no.2 in the suit in City Civil Court, filed a copy of the order in a Notice of Motion. The order was relied upon on the basis that the judgment dated 18th December, 2017 was a subsequent development and that the cause of action in the suit would not survive in view of rejection of the writ petition. The Notice of Motion was seeking rejection of the plaint under Order VII Rule 11 of the Code of Civil

Procedure. Thus it is this date of knowledge that Mr. Narvekar has relied upon for the sake of computing delay.

5. Mr. Narvekar further submitted that soon after coming to learn of the order, the Summer Vacation commenced. In June 2018, certain suits came to be transferred from City Civil Court at Dindoshi to City Civil Court at Mumbai and six months time was consumed in transfer of the suits from one court to another. A reply was filed to the Notice of Motion under Order VII Rule 11, in January 2019 contending inter alia that so called subsequent development being the order in the Writ Petition was not relevant since they were not concerned with the proceedings and the Writ Petition did not originate from the suit. The Review Petitioners stated case in the said motion was that the order in the Writ Petition could not be a ground to reject the plaint under Order VII Rule 11.

6. Mr. Narvekar then submitted that the concerned Court room at the Bombay City Civil Court at Bombay, was vacant for four months and thus it is only in February 2019 the Notice of Motion came up for hearing. Counsel for respondent no.2 had then taken up the plea that the judgment in the Writ Petition had attained finality and the observations in the judgment had not been

questioned, particular reference being had to paragraph 22, Mr. Narvekar submitted that the workmen dismissed by respondent no.1 including the applicants were under the impression that there was no need for challenging the order in the Writ petition since they were not parties and these applicants had parted ways with the trade union petitioner since 2006. Thus, reference to some “members” having filed a suit in the City Civil Court was misleading since they were not members of the petitioner union. By misleading this court, a fraud had been perpetrated and as a result of such fraud, it amounted to a major error apparent on the face of the order or judgment and has caused prejudice to the applicants who were not even parties.

7. After having realized that a third party is entitled to file a review petition, sometime in November 2019, they filed this petition. According to the applicants, there is no delay or laches in approaching this court and immediately on becoming aware of their rights they have sought to file this review. The applicants are striving for justice and this is being denied due to ingenious attempts of the respondents. Mr. Narvekar has raised a serious grievance as to the approach adopted by the respondents and submitted that the delay in filing the review petition requires to

be condoned in the peculiar facts and circumstances of the case. The applicants had contended that they sought further legal advice upon which they learnt that it was appropriate that a review be sought. Mr. Narvekar submitted that as set out in the IA, delay was caused, if at all, “due to mistaken legal position” that the “applicant missed out on a correct legal discourse” at the relevant time for the reasons set out in the IA and hence he submits that their application for review ought not to be rejected due to unintentional delay.

8. Mr. Narvekar has refuted the contentions of respondent no.2 in its reply by relying on the rejoinder filed by the applicant on 2nd December, 2021. In his rejoinder, the applicant no.1 has denied the contentions of the reply and reiterated their case of fraud that the respondents in unison have played a systematic, well planned fraud on the review petitioners. The reference in the Industrial Court was a “mock proceeding” of the first instance and it culminated in the writ petition which was collusive. By fraud of misrepresentation and suppression of correct facts, the respondents allegedly persuaded the court to reject the petition. References are made to the averments in the rejoinder in support of the application for condonation of delay.

9. Mr. Narvekar has vehemently argued that there is a deliberate suppression of facts and submission of misleading and suggestion of incorrect facts of the respondents. He has relied upon several decisions of the Supreme Court in a compilation dated 15th December, 2021.

1. *Bhaurao Dagdu Paralkar v/s. State of Maharashtra and Ors.*¹
2. *S.P.Chengalvaraya Naidu (Dead) by Lrs. v/s. Jagannath (Dead) by Lrs and Ors.*²
3. *A. V. Papayya Sastry and Ors. v/s. Govt. of A.P. and Ors.*³
4. *Union of India and Ors. v/s. Ramesh Gandhi*⁴
5. *Guddappa Chikkappa Kurbar and Anr. v/s. Balaji Ramji Dange*⁵
6. *Badami (Deceased) by LR v/s. Bhali*⁶
7. *T.Vijendradas and Anr. v/s. M. Subramanian and Ors.*⁷
8. *Ganpatbhai Mahijibhai Solanki v/s. State of Gujarat and Ors.*⁸
9. *Commissioner of Customs v/s. Candid Enterprises*⁹
10. *Esha Bhattacharjee v/s. Managing Committee of Raghunathpur Nafar Academy and Ors.*¹⁰
11. *Hetal Chirag Patel and Ors. v/s. State of Gujarat and Ors.*¹¹

1 (2005) 7 SCC 605
2 (1994) 1 SCC 1
3 (2007) 4 SCC 221
4 (2012) 1 SCC 476
5 (F.B.) AIR 1941 Bom.274
6 (2012) 11 SCC 574
7 (2007) 8 SCC 751
8 (2008) 12 SCC 353
9 (2002) 9 SCC 764
10 (2013) 12 SCC 649
11 (2018) 7 SCC 703

10. Amongst all these decisions, he has placed emphatic reliance on Bhaurao Dagdu Paralkar (supra) and Esha Bhattacharjee (supra). Inviting my attention to paragraphs 9, 10, 11, 12, 14, 15 & 16 of Bhaurao Dagdu Paralkar (supra) and paragraph 21 of Esha Bhattacharjee (supra), Mr. Narvekar has submitted that the order under review is affected by fraud and collusion with intention to deceive the court and gain an advantage of the respondent. This is an act of deliberate deception for securing unfair advantage. That fraud will vitiate all solemn acts as observed by the court in the other judgments he relies upon and that the judgment under review is non-est and a nullity.

11. My attention was also invited specifically to paragraph 12 in Esha Bhattacharjee on the aspect of “sufficient cause”. He submits that there is a sufficient cause to condone the delay and in paragraph 21, he relies upon paragraph 21.1(i), 21.3 and 21.11 in support of his contention that I am required to take liberal, pragmatic, justice-oriented approach while considering

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his application for condonation of delay and that the court should not legalise injustice but remove injustice. That substantial justice is paramount and technical considerations should not be given undue or uncalled for emphasis. He further submits that technicalities such as law of limitation etc. should not come in the way of considering the application for condonation of delay as in the present case. He therefore submitted that the delay of 552 days is required to be condoned.

12. Opposing the application, Mr. Singh has firstly objected to the manner of computation of delay. He submits that the delay ought to have been counted from the expiry of 30 days from the date of order and not from the applicants knowledge. He has invited my attention to the fact that even after the matter allegedly came to the knowledge of the applicant in April 2018 the Review Petition has been affirmed on 26th November, 2019. Hence the reasons provided in the IA, cannot be believed. Secondly, it is submitted that the applicants have admitted that the delay was caused by mistake of law or it is ignorance of law that has caused the delay and there is no justifiable reason for condoning the same. Mr. Singh has invited my attention to the averment in paragraph 8 of the IA which expressly admits of the fact that the

delay caused in filing this “Revision Application”^{*} is due to mistaken legal position. Thus, there is an admission of mistake of law in the requirements of the law. He submits that sufficient cause has certainly not been made out.

^{*} sic

13. Mr. Singh also points out to the fact that the petitioners Advocate is surprisingly an applicant as well. He is the petitioner no.2 in the Review Petition. This fact that has not been pointed out earlier. This fact ought to have been brought to the notice of the court by the petitioners but is pointed out only in reply by Mr. Singh. For the purpose of this application I have chosen not to focus on this fact that Mr. Narvekar is also an applicant, Mr. Singh submitted that there is no question of fraud being played upon the court and that observations in paragraph 22 were made in the normal course, the petitioner-union was represented and whether or not the applicants were members was not an issue before this court. The fact of membership had not engaged the attention of the court at the time and in any event order had now attained finality since the Supreme Court had dismissed the Special Leave Petition (Civil) no.29888 of 2018 on 3rd December, 2018.

14. Mr. Singh relied upon the judgment in *Lala Mata Din v/s. A. Narayanan*¹³ which considered Section 5 of the Limitation Act and observed that the law is settled that mistake of counsel may be taken into circumstances only in some limited cases and there is no general proposition that mistake of counsel is sufficient ground for condoning delay. In effect, he has submitted that the various judgments relied upon by the applicants do not come to their rescue. They are on the aspect of fraud. No case is made out on the aspect of fraud that sufficient cause has also not been made out even considering the observation in paragraph 21 of *Esha Bhattacharjee* (supra). He invited my attention to hold that various principles culled out therein are heavily loaded against the applicants. He therefore submits that there is no case for condonation of delay.

15. Having heard the learned counsel for the applicants at length, Mr. Narvekar has taken me through all the averments in the IA and the judgments he seeks to rely upon. He has also invited my attention to the paragraph 22 of the order in the Writ Petition which he describes as fraudulent and that the order came to be passed on account of such alleged fraud. The writ petition

13 1969 (2) SCC 770

challenged the decision of the respondent no.1- company to transfer the respondent no.2. The Industrial Tribunal have rejected a reference challenging the transfer of the undertaking and it is an order of the Industrial Tribunal that it was up for challenge in the writ petition. Paragraph 22 makes reference to the pending suit which was filed by 7 persons, two of those appeared to be the applicants. It is not necessary to dealt with this particular at the stage since that order has already attained finality. The Motion in the City Civil Court will be decided on its own merits. The question is whether the review petitioners have made out a case for condonation of delay in filing the review? Whether sufficient cause has been made out? I am unable to agree to the contentions of the applicants and the factual aspects pleaded by the applicants.

16. Having taken into consideration the submissions made, I am unable to find in favour of the applicants. Firstly the delay is not of 552 days but longer. It had to be computed from the date of the order. Order is dated 18th December, 2017, knowledge is admitted as of 16th April, 2018. The period to be excluded run out atleast by February 2018. That apart, the reasons given do not amount to sufficient cause. The intervening Summer Vacation

after the applicants came to learnt of the order in April 2018 is of no consequence. So also the transfer of proceedings between the City Civil Court, Mumbai and City Civil Court at Dindoshi and time taken for the court to hear the Notice of Motion under Order VII Rule 11 has no bearing whatsoever on the delay in approaching this court in review. Once the applicants had knowledge of the order, there is no reason to await transfer of the suit or hearing of the Notice of Motion either before the City Civil Court at Dindoshi or at Mumbai. The fact that the applicants appear in person in courts also does not amount to sufficient cause. The fact that they have parted ways with the union in 2006 and not members with the union can be agitated before the City Civil Court.

17. Mr. Narvekar had made an attempt to suggest that the observations in paragraph 22 may be expunged from the judgment, however, that is relief sought in the review. It is in this behalf, he places reliance in *Vaishno Dhiman(supra)*, that is an aspect which cannot be gone into at this stage since I am of the view that there is no case whatsoever for condonation of delay. It is the applicant no.2 who claims that a second opinion was obtained from his Advocates friends who advised him of filing of

the review. Thus, clearly that cannot be sufficient ground even going by the principles culled out in *Esha Bhattacharjee (supra)*. In paragraph 21 of *Esha Bhattacharjee (supra)* holds that sufficient cause should be understood in the proper spirit and have to be applied in proper perspective that the concept of liberal approach himself encapsulate reasonableness and it cannot be allowed unfettered free play (see paragraph 21.7). The other judgments referred to by Mr. Narvekar are all on the aspect of fraud and how fraud vitiates proceedings. I am not satisfied that there is any element of fraud and that has no bearing on the aspect of condonation of delay. There is a distinction between the inordinate delay and delay of short duration. The former doctrine of prejudice would invite delay of short duration made under. Inordinate delay calls for strict approach whereas delay of few days calls for a liberal approach. Considering all of these, I am of the view that in the case at hand, the applicants have chosen to seek condonation without sufficient cause and it calls for a strict approach and hence, I find no reason to condone the delay.

18. As a result, IA does not succeed and I pass the following order;

(i) IA no.1246 of 2019 is dismissed.

(ii) As a consequence, Review Petition cannot be entertained and shall stand rejected.

(iii) In view of the disposal of the above, IA no.1851 of 2019 also cannot survive, same is also disposed.

(A. K. MENON, J.)