

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO. 197 OF 2020

Murlidhar s/o Amrutrao Bhonde and ors.

..vs..

Sahebrao s/o Shamrao Kakde and or.s

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri A.J. Gilda, Advocate for the Petitioner.

Shri P.R. Agrawal, Advocate for Respondent-Sole.

CORAM : SMT. ANUJA PRABHUDESSAI, J.

CLOSED FOR ORDER : 12.02.2021

DATE OF PRONOUNCEMENT : 22.02.2021

This petition under Article 227 takes exception to the order dated 03.12.2019, whereby learned Joint Charity Commissioner, Amravati allowed the application for condonation of delay and thus condoned the delay of 83 days in filing an appeal against the order dated 11.07.2017.

2. Learned Counsel for the Appellant submits that Sub section 2 of Section 70 of the Maharashtra Public Trust Act stipulates that no appeal shall be maintainable after the expiration of 60 days from the recording of the finding or the passing of the order, as the case may be. Relying upon the decision of the Apex Court in *Municipal Board, Pushkar vs. State Transport Authority Rajasthan and ors, AIR 1965 SC 458*, he submits that when the legislature has clearly intended that time should run from the 'date of the order' the Court cannot entertain the appeal filed beyond the prescribed period of limitation. Considering the mandate of the Section, the Court cannot

read the words “date of the order” , as from “the date of the knowledge of the order”. He submits that though the delay in filing the appeal could be condoned in terms of Section 75 of the Maharashtra Public Trust Act, the appeal which was filed on 05.12.2017 was not accompanied by an application for condonation of the delay. He submits that the Joint Charity Commissioner could not have entertained the application for condonation of delay which was filed only on 03.04.2018. He submits that the reasons set out in the application for condonation of delay are not genuine and that the incorrect statement made by the Respondent in the application is itself sufficient to reject the application. In support of his contention, he relied upon the decision in the case of *Pundlik Jalam Patil (dead) by Lr's vs. Executive Engineer, Jalgaon and anr. reported in 2008 (17) SCC 448*.

3. Per contra, Shri P.R. Agrawal, learned Counsel for the Respondent submits that at the time of registration of the appeal, the Office had raised the issue of limitation and that by order dated 02.01.2018, the Presiding Officer had directed registration of the appeal by keeping open the issue of limitation. Subsequently, the Respondent filed an application for condonation of delay. The application filed by the Appellant for dismissal of the appeal was dismissed by order dated 18.09.2018 mainly on the ground that the Appeal cannot be dismissed without considering the application for condonation of delay.

4. Learned Counsel for the Respondent submits that no order was passed till 04.08.2017 and that the Roznama was tampered with to make it appear that the order was

passed on 11.07.2017. It is submitted that the Respondent had no knowledge of the proceedings till the service of notice on 06.10.2017 in Regular Civil Suit 322 of 2017. He further submits that the Respondents and their earlier Counsel were genuinely under an impression that the period of limitation would commence from the date of the knowledge of the order. It was only under the instructions of the present Counsel representing the Respondent, an application for condonation of delay came to be filed after filing of the appeal. He submits that, Respondent had made out sufficient cause to condone the delay and that there is no jurisdictional error which needs to be corrected in exercise of powers under Article 226 and 227 of the Constitution of India.

5. I have perused the record and considered the submissions advanced by learned Counsel representing the respective parties.

6. It may be noted that, Sub-section 2 of Section 70 of the Maharashtra Public Trust Act provides that no appeal shall be maintainable after the expiration of 60 days from the date of recording of findings or passing of order. Section 75 of the Act empowers the authority to condone the delay, in exercise of power under Sections 4, 5, 12 and 14 of the Limitation Act. In the instant case, the Respondent had filed the appeal on 05.12.2017, which was beyond the prescribed period of 60 days from the date of the order purportedly passed on 11.07.2017. The appeal was not accompanied by delay condonation application. Nevertheless, the appeal was registered keeping open the issue of limitation in view of the

contention of the Respondent that the limitation would commence from the date of knowledge of the order. The Respondent subsequently filed an application for condonation of delay. Learned Counsel for the Petitioner questions maintainability of the application filed after filing of the appeal. It is to be noted that the Respondent subsequently filed an application for condonation of delay on the ground that they had no knowledge of the order and were under an impression that the limitation would commence from the date of knowledge. In ***State of M.P. and ors. vs. Pradeep Kumar and ors. reported (2200) 7 SCC 372*** while considering the consequences of the appeal not being accompanied by an application for condonation of delay as mentioned in Sub-Rule (1) of Rule 3-A of Order 41 of the Code of Civil Procedure, the Apex Court has observed thus :

“10. What is the consequence if such an appeal is not accompanied by an application mentioned in sub-rule(1) of Rule 3-A? It must be noted that the Code indicates in the immediately preceding rule that the consequence of not complying with the requirements in Rule 1 would include rejection of the memorandum of appeal. Even so, another option is given to the Court by the said rule and that is to return the memorandum of appeal to the appellant for amending it within a specified time or then and there. It is to be noted that there is no such rule prescribing for rejection of memorandum of appeal in a case where the appeal is not accompanied by an application for condoning the delay. If the memorandum of appeal is filed in such appeal without accompanying the application to condone delay the consequence cannot be fatal. The Court can regard in such a case that there was no valid presentation of the appeal. In turn, it means that if the appellant subsequently filed an application to condone the delay before the appeal is rejected the same should be taken up along with the already filed

memorandum of appeal. Only then the Court can treat the appeal as lawfully presented. There is nothing wrong if the Court returns the memorandum of appeal (which was not accompanied by an application explaining the delay) as defective. Such defect can be cured by the party concerned and present the appeal without further delay.”

7. It is thus well settled that non-filing of an application for condonation of delay at the time of presentation of appeal is not fatal. It is a curable defect. In the instant case, the Respondent have cured the defect by filing the application. Hence, the question whether the limitation would commence from the date of the order or from the date of knowledge of the order pales into insignificance. The only issue remains for consideration is whether the delay has been satisfactorily explained. In other words whether the Respondent had made out ‘sufficient cause’ to condone the delay.

8. It is well settled that the expression ‘sufficient cause’ should receive a liberal construction. In case of ***Collector, Land Acquisition, Anantnag and anr. vs. Mst. Katiji and ors. (1987) 2 SCC 107***, the Apex Court has held that Section 5 was enacted in order to enable the court to do substantial justice to the parties by disposing of matters on merits. The expression ‘sufficient cause’ is adequately elastic to enable the Court to apply the law in a meaningful manner which sub-serves the ends of justice that being the life purpose for the existence of the institutions of Courts. It is held that when substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preference for the other side cannot claim to have vested right in justice being done because of non-deliberate

delay. Similarly in *Oriental Aroma Chemical Industries Ltd. vs. Gujarat Industrial Development Corporation and anr. (2010)5 SCC 459* it has been observed that 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 do not resort to dilatory tactics and seek remedy without delay.

9. It is thus well settled that in deciding the application for condonation of delay, the Court is required to take justice oriented approach and at the same time ensure that the party applying for condonation of delay has not been negligent and cause shown for the delay does not lack *bona fides*.

10. In the instant case, the Respondent has averred that the matter was listed for order on 04.08.2017. It is stated that no order was passed on 11.07.2017 and that the Roznama was tampered with to make it appear that the order was passed on 11.07.2017. The contention appears to be plausible not only because of overwriting in the Roznama but in view of the fact that the matter was not listed on board on 11.07.2017 but was in fact listed on 04.08.2017. The Respondent has asserted that he was not aware of the order and till the service of notice on 06.10.2017 in Regular Civil Suit no. 322 of 2017. It is stated that he was under a *bona fide* belief that the limitation would commence from the date of knowledge of the order. The explanation appears to be *bona fides* from the fact that the Respondent had raised the same ground while responding to the objections raised by the Office on

the issue of limitation. In the facts and circumstances of the case it is evident that the Respondent has not been negligent and the explanation does not lack *bona fides*. The Respondent having shown sufficient cause, the Authority had rightly condoned the delay. The impugned order does not suffer from jurisdictional error, warranting interference in exercise of powers under Article 226 or 227 of the Constitution of India.

11. The appeal has no merits and is accordingly dismissed.

JUDGE

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