

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

**CIVIL APPLICATION NO.7973 OF 2021
IN RAST/16612/2021
WITH
CIVIL APPLICATION NO.2869 OF 2022
IN RAST/16612/2021**

**THE STATE OF MAHARASHTRA AND OTHERS
VERSUS
BHALCHANDRA SHENTADU THAKRE AND OTHERS**

...
AGP for the Applicants/ State : Mrs.M.A. Deshpande
Advocate for the original petitioners/ Respondents : Shri
Sandeep B. Sontakke
...

**CORAM : RAVINDRA V. GHUGE
&
SANDIPKUMAR C. MORE, JJ.**

DATE :- 10th June, 2022

Per Court :-

1. By the first Civil Application No.7973/2021, the State Government seeks condonation of delay of 635 days in filing the Review Application.

2. The contention of the State Government is that the order of this Court, which is sought to be reviewed, does not reflect the intricate issues raised by the Government, inasmuch as, there is no adjudication on such contentions. Since the State

Government also suffers financial implications on account of the said order, it was decided, after taking legal advise, to file the review petition. By the order sought to be reviewed, the petitioners in the writ petitions have got dual benefits viz. benefits of hike in pay scale owing to the sixth pay scale recommendations and on account of the advance increments/increments for excellent work by virtue of certain government resolutions. No employee can be held entitled for dual monetary benefits, is the argument and therefore, it is contended that these submissions have not been considered while delivering the order, which is now sought to be reviewed.

3. The learned advocate representing the original petitioners has strenuously opposed this application contending that the delay should not be condoned on sympathetic ground. The condonation of delay is not a routine exercise. Unless there are convincing reasons, delay should not be condoned. Large delay is caused and considering the view taken in ***Vedanta Ltd. (Formerly known as M/s Sesa Sterlite Ltd.) vs. Goa Foundation and others, 2021 (7) SCC 206***, the delay ought not to be condoned.

4. The learned AGP for the applicants/ State

Government submits, in rebuttal, that the State Government has not waited for the Judges who have delivered the orders, to retire and therefore, has purportedly delayed the review petition. One of the Senior Member of the Bench is still a Judge of this Court. It is only that the said learned Judge has moved to the Principal Seat. Since the State Government was to take a decision and it was based on the legal advise, that, time has been lost and as soon as the State Government was advised to prefer a review, the Review Petition is filed.

5. The law on condonation of delay was first settled by the Honourable Supreme Court in the ***Collector, Land Acquisition, Anantnag (supra)*** wherein, it was concluded in paragraph 3 as under :-

“3. *The legislature has conferred the power to condone delay by enacting Section 51 of the Indian Limitation Act of 1963 in order to enable the Courts to do substantial justice to parties by disposing of matters on merits. The expression "sufficient cause" employed by the legislature is adequately elastic to enable the courts to apply the law in a meaningful manner which subserves the ends of justice that being the life-purpose for the existence of the institution of Courts. It is common knowledge that this Court has been making a justifiably liberal approach in matters instituted in this Court. But the message does not appear*

to have percolated down to all the other Courts in the hierarchy. And such a liberal approach is adopted on principle as it is realized that:-

"Any appeal or any application, other than an application under any of the provisions of Order XXI of the Code of Civil Procedure, 1908 may be admitted after the prescribed period if the appellant or the applicant satisfies the court that he had sufficient cause for not preferring the appeal or making the application within such period."

1. Ordinarily a litigant does not stand to benefit by lodging an appeal late.

2. Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this when delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties.

3. "Every day's delay must be explained" does not mean that a pedantic approach should be made. Why not every hour's delay, every second's delay? The doctrine must be applied in a rational common sense pragmatic manner.

4. When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay.

5. There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala-fides. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk.

6. *It must be grasped that judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so.*

Making a justice-oriented approach from this perspective, there was sufficient cause for condoning the delay in the institution of the appeal. The fact that it was the State which was seeking condonation and not a private party was altogether irrelevant. The doctrine of equality before law demands that all litigants, including the State as a litigant, are accorded the same treatment and the law is administered in an even handed manner. There is no warrant for according a stepmotherly treatment when the State is the applicant praying for condonation of delay. In fact experience shows that on account of an impersonal machinery (no one in charge of the matter is directly hit or hurt by the judgment sought to be subjected to appeal) and the inherited bureaucratic methodology imbued with the note-making, file pushing, and passing-on-the-buck ethos, delay on its part is less difficult to understand though more difficult to approve. In any event, the State which represents the collective cause of the community, does not deserve a litigant-non-grata status. The Courts therefore have to be informed with the spirit and philosophy of the provision in the course of the interpretation of the expression "sufficient cause". So also the same approach has to be evidenced in its application to matters at hand with the end in view to do even-handed justice on merits in preference to the approach which scuttles a decision on merits. Turning to the facts of the matter giving

rise to the present appeal, we are satisfied that sufficient cause exists for the delay. The order of the High Court dismissing the appeal before it as time barred, is therefore, set aside. Delay is condoned. And the matter is remitted to the High Court. The High Court will now dispose of the appeal on merits after affording reasonable opportunity of hearing to both the sides.”

6. In *Esha Bhattacharjee v/s Managing Committee of Raghunathpur Nafar Academy*, (2013) 12 SCC 649, the Honourable Supreme Court has considered the entire law on condonation of delay by referring to catena of judgments and has observed as under :-

“8. Before we delve into the factual scenario and the defensibility of the order condoning delay, it is seemly to state the obligation of the court while dealing with an application for condonation of delay and the approach to be adopted while considering the grounds for condonation of such colossal delay.

9. In Collector, Land Acquisition, Anantnag and another v. Mst. Katiji and others [(1987) 2 SCC 107], a two-Judge Bench observed that:

“3. The legislature has conferred power to condone delay by enacting Section 5 of the Indian Limitation Act of 1963 in order to enable the courts to do substantial justice to parties by disposing of matters on merits. The expression “sufficient cause” employed by the

legislature is adequately elastic to enable the courts to apply the law in a meaningful manner which subserves the ends of justice – that being the life-purpose for the existence of the institution of courts.”

The learned Judges emphasized on adoption of a liberal approach while dealing with the applications for condonation of delay as ordinarily a litigant does not stand to benefit by lodging an appeal late and refusal to condone delay can result in an meritorious matter being thrown out at the very threshold and the cause of justice being defeated.

10. *It was stressed that there should not be a pedantic approach but the doctrine that is to be kept in mind is that the matter has to be dealt with in a rational commonsense pragmatic manner and cause of substantial justice deserves to be preferred over the technical considerations. It was also ruled that there is no presumption that delay is occasioned deliberately or on account of culpable negligence and that the courts are not supposed to legalise injustice on technical grounds as it is the duty of the court to remove injustice.*
11. *In the said case the Division Bench observed that the State which represents the collective cause of the community does not deserve a litigant-non-grata status and the courts are required to be informed with the spirit and philosophy of the provision in the course of interpretation of the expression “sufficient cause”.*

12. In G. Ramegowda, Major and others v. Special Land Acquisition Officer, Bangalore [(1998) 2 SCC 142], Venkatachaliah, J. (as his Lordship then was), speaking for the Court, has opined thus:-

“14. The contours of the area of discretion of the courts in the matter of condonation of delays in filing appeals are set out in a number of pronouncements of this Court. See : *Ramlal, Motilal and Chhotelal v. Rewa Coalfield Ltd.* [AIR 1962 SC 361] ; *Shakuntala Devi Jain v. Kuntal Kumari* [AIR 1969 SC 575] ; *Concord of India Insurance Co. Ltd. V. Nirmala Devi* [(1979) 4 SCC 365] ; *Lala Mata Din v. A. Narayanan* [(1969) 2 SCC 770] ; *Collector, Land Acquisition v. Katiji etc.* There is, it is true, no general principle saving the party from all mistakes of its counsel. If there is negligence, deliberate or gross inaction or lack of bona fide on the part of the party or its counsel there is no reason why the opposite side should be exposed to a time-barred appeal. Each case will have to be considered on the particularities of its own special facts. However, the expression ‘sufficient cause’ in Section 5 must receive a liberal construction so as to advance substantial justice and generally delays in preferring appeals are required to be condoned in the interest of justice where no gross negligence or deliberate inaction or lack of bona fides is imputable to the party seeking condonation of the delay.”

13. In O.P. Kathpalia v. Lakhmir Singh (dead) and others [(1984) 4 SCC 66], the court was dealing with a fact-

situation where the interim order passed by the court of first instance was an interpolated order and it was not ascertainable as to when the order was made. The said order was under appeal before the District Judge who declined to condone the delay and the said view was concurred with by the High Court. The Court, taking stock of the facts, came to hold that if such an interpolated order is allowed to stand, there would be failure of justice and, accordingly, set aside the orders impugned therein observing that the appeal before the District Judge deserved to be heard on merits.

14. *In State of Nagaland v. Lipok AO and others [(2005) 3 SCC 752], the Court, after referring to New India Insurance Co. Ltd. V. Shanti Misra [(1975) 2 SCC 840], N. Balakrishnan v. M. Krishnamurthy [AIR 1998 SC 3222], State of Haryana v. Chandra Mani [(1996) 3 SCC 132] and Special Tehsildar, Land Acquisition v. K.V. Ayisumma [(1996) 10 SCC 634], came to hold that adoption of strict standard of proof sometimes fails to protect public justice and it may result in public mischief.*
15. *In this context, we may refer with profit to the authority in Oriental Aroma Chemical Industries Limited v. Gujarat Industrial Development Corporation and another [(2010) 5 SCC 459], where a two-Judge Bench of this Court 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.”

Thereafter, the learned Judges proceeded to state that this Court has justifiably advocated adoption of liberal approach in condoning the delay of short duration and a stricter approach where the delay is inordinate.

16. *In Improvement Trust, Ludhiana v. Ujagar Singh and others [(2010) 6 SCC 786], it has been held that:-*

“16. While considering an application for condonation of delay no straitjacket formula is prescribed to come to the conclusion if sufficient and good grounds have been made out or not.”

It has been further stated therein that each case has to be weighed from its facts and the circumstances in which the party acts and behaves.

17. *A reference to the principle stated in Balwant Singh (dead) v. Jagdish Singh and others [(2010) 8 SCC 685] would be quite fruitful. In the said case the Court referred to the pronouncements in Union of India v. Ram Charan [AIR 1964 SC 215], P.K. Ramachandran v. State of*

Kerala [(1997) 7 SCC 556] and Katari Suryanarayana v. Koppiseti Subba Rao [(2009) 11 SCC 183] and stated thus:-

“25. We may state that even if the term “sufficient cause” has to receive liberal construction, it must squarely fall within the concept of reasonable time and proper conduct of the party concerned. The purpose of introducing liberal construction normally is to introduce the concept of “reasonableness” as it is understood in its general connotation.

26. The law of limitation is a substantive law and has definite consequences on the right and obligation of a party to arise. These principles should be adhered to and applied appropriately depending on the facts and circumstances of a given case. Once a valuable right has accrued in favour of one party as a result of the failure of the other party to explain the delay by showing sufficient cause and its own conduct, it will be unreasonable to take away that right on the mere asking of the applicant, particularly when the delay is directly a result of negligence, default or inaction of that party. Justice must be done to both parties equally. Then alone the ends of justice can be achieved. If a party has been thoroughly negligent in implementing its rights and remedies, it will be equally unfair to deprive the other party of a valuable right that has accrued to it in law as a result of his acting vigilantly.”

18. *Recently in Maniben Devraj Shah v. Municipal Corporation of Brihan Mumbai [(2012) 5 SCC 157], the learned Judges referred to the pronouncement in Vedabai v. Shantaram Baburao Patil [(2001) 9 SCC 106] wherein it has been opined*

that a distinction must be made between a case where the delay is inordinate and a case where the delay is of few days and whereas in the former case the consideration of prejudice to the other side will be a relevant factor, in the latter case no such consideration arises. Thereafter, the two-Judge Bench ruled thus:-

“23. What needs to be emphasized is that even though a liberal and justice-oriented approach is required to be adopted in the exercise of power under Section 5 of the Limitation Act and other similar statutes, the courts can neither become oblivious of the fact that the successful litigant has acquired certain rights on the basis of the judgment under challenge and a lot of time is consumed at various stages of litigation apart from the cost.

24. What colour the expression “sufficient cause” would get in the factual matrix of a given case would largely depend on bona fide nature of the explanation. If the court finds that there has been no negligence on the part of the applicant and the cause shown for the delay does not lack bona fides, then it may condone the delay. If, on the other hand, the explanation given by the applicant is found to be concocted or he is thoroughly negligent in prosecuting his cause, then it would be a legitimate exercise of discretion not to condone the delay.”

19. *Eventually, the Bench upon perusal of the application for condonation of delay and the affidavit on record came to hold that certain necessary facts were conspicuously silent and, accordingly, reversed the decision of the High Court*

which had condoned the delay of more than seven years.

20. *In B. Madhuri Goud v. B. Damodar Reddy [(2012) 12 SCC 693], the Court referring to earlier decisions reversed the decision of the learned single Judge who had condoned delay of 1236 days as the explanation given in the application for condonation of delay was absolutely fanciful.*
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 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 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.”

7. In addition to the above, following guidelines were added to the list, in ***Esha Bhattacharjee (supra)*** :-

“22. To the aforesaid principles we may add some more guidelines taking note of the present day scenario. They are :-

a) An application for condonation of delay should be drafted with careful concern and not in a half hazard 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.

b) 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.

c) 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.

d) 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.”

8. There can be no debate that the delay caused in

filing this application is 635 days since some time was taken to process the papers for filing the review petition. So also, the issue of dual monetary benefits has been raised and the advance increment/ increment for exceptional work, has been attempted to be stopped by the Government in view of the benefits of the sixth pay commission and in the light of the recommendations of the Hakim Commission.

9. Considering the above, we find that the delay can be condoned so as to consider the review petition in the light of the submissions of the parties. As such, Civil Application No.7973/2021 seeking condonation of delay, is allowed.

10. The learned advocate appearing before us on behalf of the non-applicants in the review petition, submits that as he has appeared on notice in the Civil Application for condonation of delay, he would file his Vakalatnama in the review petition and also file his detailed affidavit in reply.

11. Insofar as Civil Application No.2869/2022 is concerned, the same is filed seeking to amend the title clause by bringing the legal heir of deceased respondent No.3 (Ganesh Popat Mahajan). For the reasons stated in the application, the same is allowed. The legal heir of deceased respondent No.3 be

brought on record in the Review Application. Necessary amendment be carried out within two weeks.

12. In view of the above, list the Review Petition on 07.07.2022 so as to enable the non-applicants to file their affidavit in reply on or before 02.07.2022.

13. Insofar as the the request of the review applicant as regards seeking adjournment in the contempt petition, which has been filed by the original petitioners, we keep this liberty open.

kps (SANDIPKUMAR C. MORE, J.) (RAVINDRA V. GHUGE, J.)