

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

WRIT PETITION NO. 3379 OF 2006

1. Nandraya Akahtya Gavit
Age: 45, Occu: Agriculturist,
R/ Khabardi, Tal: Navapur,
Dist. Nandurbar.
2. Betkya Akhatya Gavit
Since died through LRs
 - 2A. Deelip Betkya Gavit
Age: Major, Occu: Agriculture
 - 2B. Vinay Betkya Gavit
Age: Major, Occu: Agriculture
 - 2C. Saidan Betkya Gavit
Age: Major, Occu: Agriculture
 - 2D. Aravind Betkya Gavit
Age: Major, Occu: Agriculture
 - 2E. Ramila Betkya Gavit
Age: Major, Occu: Agriculture
All R/o Village Khabardi @ Post Garad,
Tq. Nawapur, Dist. Nandurbar.
3. Pandit Akhatya Gavit
Since deceased through LRs
 - 3A. Ramesh Pandit Gavit
Age: Major, Occu: Agriculture
 - 3B. Basrya Pandit Gavit
Age: Major, Occu: Agriculture
 - 3C. Rakesh Pandit Gavit
Age: Major, Occu: Agriculture

All R/o Village Khabardi @ Post Garad,
Tq. Nawapur, Dist. Nandurbar.

.. **Petitioners**

Versus

Parbatbai Koman Gavit
Died through her LRs

1. Vasantiben Dhanjibhai Gavit
Age: 54 years, Occu: Household,
R/o. At Katasvan, Post Sakarda,
Tq. Ucchal, Dist. Tapi,
State: Gujarat.
2. Panu Ramatu Gavit
Age: Major, Occu: Nil,
R/o. At Vanjari, Post Sakarda,
Tq. Ucchal, Dist. Tapi,
State: Gujarat.

.. **Respondents**

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Advocate for Petitioners : Mr. A.A. Joshi h/f. S.V. NaTU
Advocate for Respondent No. 2 : Mr. Ruchir S. Wani
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CORAM : M.G. SEWLIKAR, J.
DATE : 20th August, 2022

JUDGMENT :-

Rule. Rule made returnable forthwith. With the consent of the parties taken up for final hearing at the admission stage.

2. Facts leading to this petition are that the respondents-original plaintiffs filed RCS No.55/1995 in the Court of C.J.J.D., Navapur, District Nandurbar. Being aggrieved by the said judgment and decree passed by the

C.J.J.D., Navapur, the petitioners (original defendants) preferred appeal in the Court Additional District Judge, Nandurbar along with Misc. Civil Application No.3/1998 for condonation of delay in filing the civil appeal. By the order dated 13th January, 2000 the learned Additional District Judge, Nandurbar was pleased to allow the application subject to payment of cost of Rs.100/-. Petitioners could not pay the cost of Rs.100/-. On 14th December, 2004 petitioners filed Misc. Civil Application No.15/2004 for condonation of delay in payment of cost. By the order dated 7th January, 2006 the learned Additional District Judge, Nandurbar was pleased to reject the said application. This order is impugned in this petition.

3. I have heard learned counsel for the petitioners Shri Joshi h/f. Shri S.V. Natu and Shri Wani learned counsel for the respondents.

4. Learned counsel for the petitioners Shri Joshi submitted that the petitioners are poor, illiterate and tribal persons residing in remote areas. They have to work in agricultural field and after kharif season they go to Gujarat for earning their livelihood. For this reason they could not pay cost of Rs.100/- for four years. In the month of November-2004 they came to know about the passing of this order and imposition of cost of Rs.100/-. Soon thereafter, the petitioners obtained certified copies of the proceedings from the District Court. They immediately filed application for condonation of

delay bearing no.15/2004 in payment of cost of Rs.100/-.

5. Learned counsel Shri Joshi submitted that the learned First Appellate Court took a pedantic and hyper technical view and refused to condone the delay. He submitted that the procedure is a handmaid of justice. The precedence should always be given to decision on merits. If the delay is not condoned the petitioners will be deprived of their valuable right to property. He has, therefore, prayed for allowing the writ petition and condonation of delay in payment of cost. He placed reliance on the cases of **Veena R. Rodkar V/s Rukhmini Vasudeo Narayan and Ors.** reported in 1992 (1) Mh.L.J. 606, **Keshao Kawadu Maral & Anr V/s. State of Maharashtra** reported in 2005 (1) Mh.L.J. 1059, **Puran Singh V/s. State of Punjab** reported in 1996 AIR (SC) 1092, **Smita Arvinda Apte & Anr. V/s. Ajay Pandurang Potdar** reported in 2006 (2) Mh.L.J. 509 and **Salem Advocate Bar Association, T.N. V/s. Union of India** reported in (2005) 6 Supreme Court Cases 344.

6. Learned counsel Shri Wani submitted that the allegations made in the petition are totally untrue. It is not the case that the petitioners are not aware of the Court functioning. The petitioners are pursuing other litigations. Therefore, it does not lie in their mouth to say that they could not pay the cost as they had to leave their village for earning livelihood. He submitted that the delay was intentional. They did not pay a meager cost of Rs.100/-. Learned

counsel Shri Wani further submitted that he had tried to obtain the certified copy of the depositions. But he could not get as the record has been destroyed. He submitted that in such circumstances it will not be appropriate to condone the delay. He placed reliance on the following cases **Balwant Singh (Dead) V/s. Jagdish Singh and Ors.** reported in (2010) 8 Supreme Court Cases 685.

7. I have given thoughtful consideration to the submissions.

8. In the case of **Balwant Singh** cited (supra) the Apex Court explained the meaning of sufficient cause as under:

“34. Liberal construction of the expression ‘sufficient cause’ is intended to advance substantial justice which itself presupposes no negligence or inaction on the part of the applicant, to whom want of bona fide is imputable. There can be instances where the Court should condone the delay; equally there would be cases where the Court must exercise its discretion against the applicant for want of any of these ingredients or where it does not reflect ‘sufficient cause’ as understood in law. [Advanced Law Lexicon, P. Ramanatha Aiyar, 2nd Edition, 1997]

35. The expression ‘sufficient cause’ implies the presence of legal and adequate reasons. The word ‘sufficient’ means adequate enough, as much as may be necessary to answer the purpose intended. It embraces no more than that which provides

a plentitude which, when done, suffices to accomplish the purpose intended in the light of existing circumstances and when viewed from the reasonable standard of practical and cautious men. The sufficient cause should be such as it would persuade the Court, in exercise of its judicial discretion, to treat the delay as an excusable one. These provisions give the Courts enough power and discretion to apply a law in a meaningful manner, while assuring that the purpose of enacting such a law does not stand frustrated.

36. We find it unnecessary to discuss the instances which would fall under either of these classes of cases. The party should show that besides acting bona fide, it had taken all possible steps within its power and control and had approached the Court without any unnecessary delay. The test is whether or not a cause is sufficient to see whether it could have been avoided by the party by the exercise of due care and attention. [Advanced Law Lexicon, P. Ramanatha Aiyar, 3rd Edition, 2005].”

9. Applying these principles to the facts of the case in hand, it has to be said that the petitioners were not diligent. Cost of Rs.100/- is not a big amount which was beyond their capacity to pay. Their inaction for four years in non-payment of cost exhibits their negligence. It cannot be said that the petitioners were diligent. Had they been diligent they would have deposited the cost immediately or within a reasonable time. Four years, by any stretch of imagination cannot be said to be a reasonable period. Therefore, the

learned First Appellate Court was right in observing that the petitioners acted indolently. The case of **Veena R. Rodkar** cited (supra) is not applicable to the facts of the instant case because it was an application for bringing LRs on record and the delay was committed in bringing the LRs on record. It was held that the petitioners came to know of the death in the year 1983 and thereafter only they filed application for condonation of delay. This is not the fact situation in the case at hand. The case of **Keshao Kawadu Maral** cited (supra) is not applicable to the facts of the case in hand because in that case also application was filed for bringing LRs on record soon after applicants got the knowledge of death of the party. In the case of **Smita Arvinda Apte** cited (supra) there was no inordinate delay in filing application for extension of time to deposit cost. Application was filed within four months for extension of time. In the case at hand, the application was filed after lapse of four years. In the case of **Salem Advocate Bar Association, T.N.** cited (supra) the Apex Court held that Court has power in exceptional and extra ordinary circumstances to use its discretion and grant such time. No extra ordinary circumstances are brought on record to condone the delay in payment of cost after four years.

10. Thus, from the facts and circumstances of the case, it is clear that petitioners were not diligent. They did not file application for extension of

time within a reasonable period. They showed total negligence and, therefore, the learned First Appellate Court was right in rejecting the application for extension of time. I do not find any infirmity in the order passed by the learned First Appellate Court. The Writ Petition is, therefore, devoid of any substance. Hence it is dismissed. Rule is discharged.

[M.G. SEWLIKAR, J.]