

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CIVIL APPLICATION NO.5278 OF 2022
IN
REVIEW APPLICATION STAMP NO.32173 OF 2021
IN
WRIT PETITION NO.10359 OF 2012

SARVESHWAR TULSIDAS BHIMALE
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

...
AND

...
CA/8058/2022 IN RAST/32185/2021 IN WP/5379/2012
CA/8059/2022 IN RAST/32178/2021 IN WP/4969/2012
CA/8060/2022 IN RAST/32184/2021 IN WP/5469/2012

...
Advocate for Applicants:
Mr. Sanket S. Kulkarni
AGP for Respondent/State: Mr. S. G. Karlekar

...

CORAM: RAVINDRA V. GHUGE
AND
ARUN R. PEDNEKER, JJ.

Reserved for Orders on:	16.09.2022
Order Pronounced on:	18.10.2022

ORDER (Per Arun R. Pedneker, J.):

1. The present applicants have filed Review Petitions against the common Judgment and Order dated 16.04.2014, in Writ Petition NO.10359 of 2012 with connected Petitions. The Applicants have filed applications for

condonation of delay of 2757 days in filing the Review Petitions.

2. Heard Mr. Sanket S. Kulkarni, Advocate for the Applicants and Mr. S. G. Karlekar, AGP for the Respondent/State.

3. The Applicants in these applications for condonation of delay state that after the aforesaid common Judgment and Order of the High Court dated 16.04.2014, in Writ Petition No.10359 of 2012 with connected Petitions, they approached the Hon'ble Supreme Court by filing Special Leave Petition (C) D.40002 of 2015 and the Supreme Court vide order dated 17.01.2020, dismissed the SLP as withdrawn. It is contended by the Applicants that the Applicants have remedy before the High Court and hence the Supreme Court was pleased to allow the Applicants to withdraw the SLP to file review before the High Court.

4. The Applicants were in search of proper legal advise because of which delay is caused. Later in the month of March 2020 lockdown was announced due to

pandemic situation and hence the Applicants could not file Review Petitions.

5. The Applicants have relied upon Section 14 of the Limitation Act, 1963 (*hereinafter refereed as '1963 Act'*) to exclude the period during the pendency of SLP.

6. The Applicants submit that in the case of B. P. Khemka Pvt. Ltd. Vs. Birendra Kumar Bhowmick and others, (1987) 2 SCC 407, the provisions under Section 14 of the 1963 for exclusion of time applies to cases where the person brings the previous suit not only in the wrong court but also where he brings the case in the right court, but, is nevertheless prevented from getting trial on merits by reason of not only any defect in jurisdiction, but also for causes of like nature.

7. The learned Advocate for the Applicants also relied upon the Judgment of the Consolidated Engineering Enterprises and others Vs. Principal Secretary Irrigation Department and others, (2008) 7 SCC 169, for the purpose of applying Section 14 of the 1963 Act. This Court at Paragraph No.12 has laid down the conditions under which Section 14 of the 1963 Act becomes applicable,

"12. Section 14 of the Limitation Act deals with exclusion of time of proceeding bona fide in a court without jurisdiction. On analysis of the said section, it becomes evident that the following conditions must be satisfied before Section 14 can be pressed into service:

(1) Both the prior and subsequent proceedings are civil proceedings prosecuted by the same party;

(2) The prior proceeding had been prosecuted with due diligence and in good faith;

(3) The failure of the prior proceeding was due to defect of jurisdiction or other cause of like nature;

(4) The earlier proceeding and the latter proceeding must relate to the same matter in issue and;

(5) Both the proceedings are in a court."

8. For delay in filing the Review Applications the learned Advocate for the Applicants rely upon the case of Esha Bhattacharjee Vs. Managing Committee of Raghunathpur Nafar Academy and others, (2013) 12 SCC 649. In the said Judgment, the Hon'ble Supreme Court laid down the principles for dealing with application for condonation of delay at Paragraph No.15 as under,

"15. 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 encapsulate 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 scrutinised 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 learned Advocate for the Applicants has also relied upon the Judgment of B. P. Khemka (*supra*), to contend that Section 5 could be discretionary but Section 14 is mandatory.

10. Now, coming to the facts of the present case, this Hon'ble Court by common Judgment and Order dated 16.04.2014, while dismissing the Writ Petition Nos.10359 of 2012, 4969 of 2012, 5379 of 2012 and 5469 of 2012, filed by the Applicants after examining the evidence of record, held that the Applicants do not belonging to the Mahadev Koli, Scheduled Tribe and thus dismissed the Writ Petitions of the Applicants upholding the order of the Scrutiny Committee invalidating the Tribe claim of the Applicants.

11. However, by the said common Judgment and Order dated 16.04.2014, the Applicants were protected from prosecution and the Applicants services including pensionary benefits were protected. It is further observed in the said Judgment dated 16.04.2014, that the Applicants or none of the family members would be entitled for any benefit for claiming any benefit on the basis that they belonging to the Scheduled Tribe.

12. The Applicants challenged the common Judgment and Order dated 16.04.2014, in Writ Petition No.10359 of 2012 with connected Petitions, before the Hon'ble Supreme Court in the year 2015, but apparently did not get any orders from the Supreme Court till 2020, when the SLP was unconditionally withdrawn on 17.01.2020. Notice was also not issued in the SLP. The order passed in the said SLP is quoted below:-

“ ORDER
Learned counsel for petitioner seeks permission to withdraw the present petition.
Permission granted.
Accordingly, the Special Leave Petition is dismissed as withdrawn.
Pending application(s), if any, shall stand disposed of.”

13. The applicants, thereafter, filed present Review Petitions seeking review of common Judgment and Order

dated 16.04.2014 passed in Writ Petition No.10359 of 2012 with connected Petitions, in this Court with the applications for condonation of delay.

14. Having considered the facts situation in the present case, we are not inclined to exclude the period under Section 14 of the Limitation Act, spent in the proceedings before the Hon'ble Supreme Court in prosecuting the Special Leave Petition (C) D.40002 of 2015 dated 17.01.2020, by applying the conditions laid down for applicability of Section 14 of the Limitation Act, in the case of **Consolidated Engineering Enterprises and others Vs. Principal Secretary Irrigation Department and others** (*supra*), and applying the principles dealing with the application for condonation of delay as stipulated in the case of **Esha Bhattacharjee Vs. Managing Committee of Raghunathpur Nafar Academy and others** (*supra*), for the following reasons:-

- (a) The proceedings in the SLP were not prosecuted diligently and the same remained defective and was not taken up for hearing till 2020.

(b) The Applicants lack bonafide as they have clearly let their SLP remain pending and have taken the benefits of the judgment under review for a considerable period of time and now seek to review the same.

(C) There is no substantial injustice to the Applicants and the Hon'ble Supreme Court did not find any error apparent on the record of the Judgment of this Court.

(d) It is to be noted that there is an inordinate delay. In any event, the SLP is dismissed in January 2020 and the review petitions are filed in the year 2021 and the Civil Applications are registered in the year 2022.

15. Thus, the applications for condonation of delay in filing the review petitions are dismissed. Accordingly, the review petitions are dismissed on the ground of inordinate delay.