

Amrut

IN THE HIGH COURT OF BOMBAY AT GOA
MISC. CIVIL APPLICATION NO.546 OF 2018
IN
STAMP NUMBER MAIN NO.685 OF 2017 (F)

VASANT V. GHARSE
(DECEASED) THR LRS.

... Applicants

Versus

RAMNATH MOGU NAIK AND ANR

... Respondents

Mr G. Agni and Mr K. Kavlekar, Advocates for the Applicants.
Ms. R. Pereira, Advocate for Respondent No.2.

CORAM: M. S. SONAK, J.

DATED : 21st OCTOBER 2022

P.C.:

1. Heard Mr Agni, learned counsel for the Applicants, and Ms Pereira learned counsel for Respondent No.2.
2. Mr Agni points out that the legal representatives of the deceased Respondent No.1 are served through publication.
3. This is an application seeking a delay of 10 months and 17 days in instituting the Second Appeal. The Application explains that the certified copy of the decree dated 07.01.2016 was delivered on 22.02.2016. The appeal had to be therefore instituted by 11.04.2016.

However, in April 2016, the Appellant was preoccupied with his school-going children's educational and other curricular activities. When he contacted the Advocate in May, the Advocate informed him that his office would be closed during May vacation.

4. In June, when the Appellant contacted the Advocate, the Advocate agreed to prepare the draft of the appeal, and the same was prepared and given to the Appellant in the first week of July. However, from July to September, the Advocate was required to travel to Mumbai and Pune, due to which the appeal could not be finalized. In October, the Advocate's office was infested with termites and white ants, and pest control treatment and urgent renovation work had to be undertaken. As a result, the files were shifted to alternate premises. These files, along with some other files, were therefore misplaced. Ultimately, the files were traced. The details of these facts have been set out in the Application. All this resulted in a delay of about 10 months and 17 days in instituting this appeal.

5. Ms Pereira opposes the Application for condonation of delay. She submits that there was no diligence on the Appellant's part. Most of the cause shown relates to the period after the expiry of the period of limitation. She submits that the cause shown is vague and inspires no confidence. Therefore, she submitted that the Application should be dismissed.

6. On due consideration of rival contentions, averments in the Application seeking condonation of delay, and the reply filed on behalf

of Respondent No.2, I am satisfied that sufficient cause has been shown for condonation of delay. However, such condonation will have to be subject to certain terms like payment of costs.

7. The cause shown above constitutes sufficient cause. In April and May, despite best efforts, the Appellant could not file the appeal. In June, his Advocate did prepare the memo of appeal. However, there were some issues with the finalization of the draft due to the Advocate travelling to Mumbai and Pune. After that, Advocate's office was infested with termites and white ants. Urgent steps had to be taken for pest control treatment and renovation. In the bargain, the files had to be shifted to alternate premises where they got lost or mixed up with other files. This cannot be called a vague statement. In the reply, there was no serious challenge to all these aspects. The focus was on the alleged lack of diligence on the part of the Appellant. The Appellant has taken steps to pursue the filing of the appeal and the delay to a great extent for reasons beyond his control.

8. Ms Pereira relies on *Majji Sannemma alias Sanyasirao Vs Reddy Sridevi and others*¹, including in particular para 20 thereof, which reads as follows:-

"20. In the case of Basawaraj (supra), it is observed and held by this Court that the discretion to condone the delay has to be exercised judiciously based on facts and circumstances of each case. It is further observed that the expression "sufficient cause" cannot be liberally

interpreted if negligence, inaction or lack of bona fides is attributed to the party. It is further observed that even though limitation may harshly affect rights of a party but it has to be applied with all its rigour when prescribed by statute. It is further observed that in case a party has acted with negligence, lack of bona fides or there is inaction then there cannot be any justified ground for condoning the delay even by imposing conditions. It is observed that each Application for condonation of delay has to be decided within the framework laid down by this Court. It is further observed that if courts start condoning delay where no sufficient cause is made out by imposing conditions then that would amount to violation of statutory principles and showing utter disregard to legislature."

9. Applying the ruling above, peculiar facts of the present case are considered. Such facts make out a sufficient cause for the condonation of delay. Besides exercising discretion, the Court is also guided by principles in *N. Balakrishnan Vs M. Krishnamurthy*² and *Esha Bhattacharjee Vs Managing Committee of Raghunathpur Nafar Academy and others*³. In these cases, the Hon'ble Supreme Court has held that the expression "*sufficient cause*" should be construed liberally. Acceptability of explanation for the delay is the sole criterion, not the delay's length. Accordingly, the Court should normally condone the delay in the absence of anything showing malafide or deliberate delay as a dilatory tactic. However, while doing so, the

² (1998) 7 SCC 123

³ 2013 (12) SCC 649

Court should also keep in mind the consequent litigation expenses incurred by the opposite party and compensate him accordingly.

10. The Hon'ble Supreme Court has also held that there can be some lapse on the part of the litigant concerned in every case of delay. However, that alone is not enough to turn down his plea and shut the door against him. If the explanation does not smack of malafides or it is not put forth as part of a dilatory strategy, the Court must show utmost consideration to the suitor.

11. The Court must also keep in mind that the rule of limitation is not meant to destroy parties' rights. But they are intended to see parties not resort to dilatory tactics but seek their remedy promptly. The primary function of a Court is to adjudicate the dispute between the parties and to advance substantial justice. The time limit fixed for approaching the Court in different situations is not because on the expiry of such time, a bad cause would transform into a good cause.

12. Thus applying the above principles to the facts in the present case, the delay is required to be condoned subject to payment of costs of ₹25,000/- to Respondent No.2. No costs need to be paid to the remaining Respondents. This is because they have not bothered to appear in the matter or even oppose the motion for condonation of delay.

13. Accordingly, the Misc. Civil Application is allowed. The delay is condoned subject to payment of costs of ₹25,000/- within four weeks

to Respondent No.2. The Applicant is at liberty to either pay these costs directly or deposit the costs in this Court so that Respondent No.2 can withdraw the same unconditionally.

14. The Misc. Civil Application is disposed of in the above terms.

15. Place the appeal for admission on 24.11.2022.

M. S. SONAK, J.

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