

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

INTERIM APPLICATION NO. 30326 OF 2022

IN

COMMERCIAL APPEAL FROM ORDER (L) NO. 27216 OF 2022

Bank of India,)
A Bank constituted under)
the Provisions of Banking)
Regulation Act, 1949 having its)
Head Office at : Chander Mukhi)
Nariman Point, Star House,)
G-5, G Block BKC, Bandra Kurla)
Complex, Bandra (East),)
Mumbai – 400 051.) .. Appellant
v/s.

1. Magnifico Minerals)
Private Limited)
A company duly registered &)
Incorporated under provisions)
of the Companies Act, 1956)
having its registered Office at:)
75, Khirki Village, Malviya)
Nagar; New Delhi – 110 017.)

2. Bank of Baroda)
(Earlier Dena Bank))
A Body constituted under the)
Provisions of Banking)
Regulation Act, 1949 having)

its Corporate Office at : Baroda)
Corporate Centre, Plot No. C-26)
Block G, Bandra Kurla Complex)
Bandra (East),)
Mumbai – 400 005.) .. Respondents

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Mr. O. A. Das, for appellant/applicant.

Ms. Akshaya Puthran i/by S. K. Singhi & Partners for respondent no.2.

Mr. Karan Bhosle a/w. Ms. Priyanka Dubey, Ms. Megha Gupta i/by
Hedgehog Fox LLP for respondents.

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CORAM : K. R. SHRIRAM &

KAMAL KHATA, JJ.

DATED : 19TH DECEMBER, 2022.

JUDGMENT (PER. K. R. KHATA, J.)

1. This application is for condoning a delay of 579 days in filing of appeal.

2. The reasons to grant condonation, can be found in paragraph nos.2 to 4 which read as under:

2. The Applicant states that the Impugned Order was passed on 09.11.2020 and the Certified Copy was applied on 11.11.2020 and the same was made available on 05.12.2020. Thereafter the Applicant / Appellant instructed its Advocate who appeared in the Hon'ble Trial Court to file Appeal. Accordingly, the Applicant's Advocate sent the

draft of Appeal to the Applicant's Delhi Branch. It was approved by the legal department and returned to Advocate to file Appeal. Thereafter, the Applicant was under the impression that Applicant's earlier Advocate has filed the Appeal against the Impugned Order. The Applicant respectfully submitted that the Advocate has not informed any developments nor given any reply, even though the Applicant asked about the status of the matter. In spite of several letters and reminders the Advocate not given any information about the matter. Therefore, contacted to Head Office, Bombay Legal section to enquire about the matter. Upon the Head Office, Legal section enquiry it was revealed that earlier Advocate was suffering from Cancer and Bed-ridden and his Office was closed further came to know that the Appeal was not filed due to his illness. After the Advocate was bed-ridden due to Cancer, he neither returned the Papers nor informed the Bank about non-filing of the Appeal.

3. The Applicant further submits that in or about middle of August 2022 the Applicant came to know about the said fact and then the Applicant has engaged a new Advocate in the month of September, 2022. It is further submitted that after collecting all the papers, Applicant's present Advocate filed the present Appeal. Therefore, there is delay in filing the Appeal, The delay is not intentional but due to the reasons set out hereinabove. The Applicant respectfully prays that the delay may be condoned in the interest of justice. The Applicant has a very good case on merits. If the delay is condoned there is no harm or injury to the Respondents, and if is not condoned there will be great loss / damage caused to the Applicant.

4. The Applicant further states that in view of the facts set out hereinabove, there is delay of 579 days in filing the present Appeal which may be condoned. It is further submitted that the Advocate ought to have informed the development in time nor returned the papers.

3. Mr. Das for Applicant submitted that due to the advocate's

mistake, applicant should not be punished. In the application,, in support thereof, applicant has relied upon *Rafiq and Ors. v/s. Munshilal and Ors.*¹ and *Smt. Lachi Tewari and others v/s. Director of Land Records and others.*²

4. Similarly, in the application, reliance has been placed upon *State Bank of India vs. Javed Textiles and Others*³ to submit that applicant is a Nationalized Bank dealing with public money and should not be treated at par with private individuals and institutions.

5. Reliance also is placed upon *M/s. Transasia Bio-Medicals Ltd. Vs. M/s. Revijay Clinical Laboratory and Hospital*⁴ to submit that in any event, a litigant should not be penalized when it is not their fault.

6. Mr. Das lastly submitted that even he was unwell for some time and a part of the reason for delay was also on his account.

7. In our view, as is apparent from the application, there is no sufficient cause made out and an insincere effort is made to get the delay condoned.

1 AIR 1981 SC 1400.

2 AIR 1984 SC 41.

3 AIR 1986, Bom. 246.

4 2003(3) ALL MR 467.

We say this because,

(a) The applicant is a Nationalized Bank and has several persons to look after its affairs and a team of people for legal matters. It is well equipped with technology to communicate with people through telephones, emails, sms, whatsapp etc.

There are no particulars given,

(b) As to when (the date) the instructions were given to advocate to file the appeal after the certified copy of the order was made available on 5th December 2020 is not mentioned.

(c) When (the date) the draft appeal was sent to its Delhi Branch, when (the date) it was approved by the legal department and returned to the advocate. (the date) – even approximate date is not given;

(d) With regard to the alleged follow up with the advocate and in the absence of revert from him what action the bank took against the officers is also not mentioned. What steps were taken to follow up is also not given.

(e) How the applicant suddenly came to know only in August 2022, is not explained.

(f) Despite the delay, why applicant took more than a month to engage a new advocate in September 2022 is not explained.

8. This is a Commercial Appeal that is being filed by applicant. The Hon'ble Apex Court in *Government of Maharashtra (Water Resources Department) Represented By Executive Engineer vs. Borse Brothers Engineers And Contractors Private Limited*⁵ in paragraph nos.59, 62 and 63 has held as under:

*"59. Likewise, merely because the Government is involved, a different yardstick for condonation of delay cannot be laid down. This was felicitously stated in *Postmaster General v. Living Media (India) Ltd. [Postmaster General]* as follows: (SCC pp. 573, paras 27 -29)*

27. It was not in dispute that the persons(s) concerned were aware or conversant with the issues involved including the prescribed period of limitation for taking up the matter by way of filing a special leave petition in this Court. They cannot claim that they have a separate period of limitation when the Department was possessed with competent persons familiar with court proceedings. In the absence of plausible and acceptable explanation, we are posing a question why the delay is to be condoned mechanically merely because the Government or a wing of the Government is a party before us.

28. Though we are conscious of the fact that in a matter of condonation of delay when there was no gross negligence or deliberate inaction or lack of bona fides, a liberal concession has to be adopted to advance substantial justice, we are of the view that in the facts and circumstances, the Department cannot take advantage of various earlier decisions. The claim on account of impersonal machinery and inherited bureaucratic methodology of

5 (2021) 6 Supreme Court Cases 460.

making several notes cannot be accepted in view of the modern technologies being used and available. The law of limitation undoubtedly binds everybody, including the Government.”

62. Also, it must be remembered that merely because sufficient cause has been made out in the facts of a given case, there is no right in the appellant to have delay condoned. This was felicitously put in *Ramlal v. Rewa Coalfields Ltd.*⁶

63. Given the aforesaid and the object of speedy disposal sought to be achieved both under the Arbitration Act and the Commercial Courts Act, for appeals filed under Section 37 of the Arbitration Act that are governed by Articles 116 and 117 of the Limitation Act or Section 13(1-A) of the Commercial Courts Act, a delay beyond 90 days, 30 days or 60 days, respectively, is to be condoned by way of exception and not by way of rule. In a fit case in which a party has otherwise acted bona fide and not in a negligent manner, a short delay beyond such period can, in the discretion of the court, be condoned, always bearing in mind that the other side of the picture is that the opposite party may have acquired both in equity and justice, what may now be lost by the first party's inaction, negligence or laches.

(Emphasis supplied)

9. In this case, we are satisfied that the applicant has not acted bonafide and has treated the matter casually. Being a Public Sector Bank, it should have been more careful dealing with public money, particularly when it is possessed with competent persons familiar with court proceedings. In the absence of plausible and acceptable

⁶ (1962) 2 SCR 762; AIR 1962 SC 361

explanation, we are not inclined to exercise discretion in favour of applicant.

10. We have to observe that the staff / officers of public sector banks / Nationalized Banks and public undertakings are insensitive about the fact that they are working for the public and dealing with public money. Their lackadaisical attitude puts the public money at grave risk and consequently the economy of the country. Whilst applicant (a Nationalized Bank) expects the Courts to protect the interest of the public, they continue to be lackadaisical and negligent and have taken the Courts for granted, which in our opinion, is required to be stopped. The errant staff and officers need to be pulled up and made accountable. It is high time that the public sector banks / Nationalized Banks should take things seriously and be made conscious of the fact that their negligence causes a great deal of loss to the public. In this case too it appears that they are not made answerable so far and no action seems to have been taken against them by the higher authorities for their neglect of matters.

11. It will be apposite to quote from the judgment *State Bank of India (supra)* where the Court in paragraph no.4 observed that :-

"4.....The property of the public institutions belongs to the society in general and not to any individual or group of individuals in particular. Precisely for this reason, it appears that no particular individual is interested in safeguarding it. What belongs to all belongs to none in particular. The affairs of the public institutions are managed by paid employees, some of whom are interested only in their salaries. As long as their salaries and jobs are not threatened, they take the least care in safeguarding the interests of the institutions they serve. In the hierarchy of responsibility in the bureaucratic set up which invariably accompanies these institutions, the responsibility for the loss to the institution is hard to fix, and the employees take advantage of the same. What is more, with the growing corruption in various forms, it is not difficult for interested parties to manage delays in taking legal proceedings against the debtors of these institutions. In all cases where public institutions such as banks are involved, the stakes are bound to be high. It will not be difficult for unscrupulous persons to make a regular business out of the deliberate delays in taking appropriate legal proceedings against the debtor."

These observations hold true even today. However, it is necessary for the courts to step up and change in accordance with the times. It is now exceedingly onerous and difficult to retrieve money lent if there is considerable delay in proceeding against the defaulters. It is therefore imperative for the institutions to take strict action against all concerned and penalize them in such a manner that they would desist from causing any loss to the public money. The times have changed

and consequently the difficulties faced then as narrated in *State Bank of India (supra)*.

12. In our view, therefore, mere granting of costs or penalizing the officers responsible, would not suffice as considerable time having passed, the concerned officers may not be either available on account of transfer, superannuation etc. and if they have passed, we do not propose to penalize the family.

13. As regards *Rafiq & Ors (supra)* and *Smt. Lachi Tewari (supra)* the party, an individual, had done everything in his power to effectively participate in the proceedings unlike the case at hand where the party is an institution, a nationalized bank.

14. As regards, *M/s Transasia Bio Medicals Ltd. (supra)*, it is not applicable to the facts of this case as the court was not dealing with a delay condonation application. In that case Court was dealing with a situation where a mistake was committed by the court in not passing an order on the petition taken out by plaintiff under Clause XII of the Letters Patent and in that context the court held that the party could not be made to suffer.

15. In any case, all the submissions made in this application relying upon *Rafiq & Ors (supra)*, *Smt. Lachi Tewari (supra)* and *M/s. Transasia Bio-Medicals Pvt. Ltd. (supra)* have been effectively dealt with the Apex Court. In *Government of Maharashtra (Water Resources Department) Represented by Executive Engineer (supra)* where it is held that, merely because the Government is involved, a different yardstick for condonation of delay cannot be laid down and in commercial matters, condonation of delay should be an exception and not a rule.

16. The application is therefore, dismissed. No order as to costs. Appeal, consequently, also dismissed.

(KAMAL KHATA, J.)

(K.R. SHRIRAM, J.)