

**THE HON'BLE JUSTICE MOUSHUMI BHATTACHARYA
AND
THE HON'BLE JUSTICE GADI PRAVEEN KUMAR**

**I.A.Nos.1 AND 2 OF 2023
IN
WRIT PETITION No.5898 of 2019**

Mr. M. Narender Reddy, learned Senior Counsel representing Mr. Arun Kumar Satyavolu, learned counsel appearing for the petitioner.

Mr. K. Sai Krishna, learned counsel representing Mr. Kamtala Krishna Kalyan, learned counsel appearing for the respondent No.3.

ORDER: (Per Hon'ble Justice Moushumi Bhattacharya)

1. I.A.No.1 of 2023 is filed by the petitioner, State Bank of India, for condonation of delay of 542 days in applying for restoration of the Writ Petition. The petitioner-Bank has also filed I.A.No.2 of 2023 for setting aside of the order dated 16.03.2022 dismissing the Writ Petition and to restore of the Writ Petition to its original file. The Writ Petition was dismissed for default on 16.03.2022.

2. Learned Senior Counsel appearing for the petitioner and learned counsel appearing for the respondent No.3 have made their respective submissions.

3. We have considered the arguments of the counsel and perused the records. We have considered the list of dates and the

Synopsis and the citations relied on by learned Senior Counsel appearing for the petitioner-Bank.

4. We note that the delay condonation petition i.e., I.A.No.1 of 2023 does not mention any grounds for condoning the delay save and except that the petitioner's counsel was affected with Covid and suffered from a heart problem for "*quite long time...*". The said IA does not state any other reason including of relevant dates with regard to the alleged affliction. I.A.No.2 of 2023 for setting aside the order dated 16.03.2022, by which the Writ Petition was dismissed for non-prosecution, contains the following reasons for setting aside the order dated 16.03.2022.

(i) The counsel entrusted with the case contracted Covid and suffered heart problems for a long time. Counsel hence could not appear before the Court when the matter was listed for hearing.

(ii) The Writ Petition was not listed due to the Covid pandemic, before 03.03.2021 when the matter was listed under the caption 'For Dismissal'. On 03.03.2021, the Court directed posting of the matter to 16.03.2022 under the same caption.

(iii) The Court was constrained to dismiss the Writ Petition on 16.03.2022 for non-prosecution on account of repeated defaults on the part of the petitioner-Bank.

5. No other grounds are mentioned for setting aside of the order of dismissal. The remaining paras of I.A.No.2 of 2023 deal with the principles of waiver and estoppel and abuse of process of law. The petitioner has also made allegations against the Advocate for failing to represent the petitioner.

6. As stated above, I.A.No.1 of 2023 which is for condonation of delay of 542 days does not contain any reasons. I.A.No.2 of 2023 contains only one reason, that is of counsel being affected with Covid. Significantly, none of the IAs mentions any dates including the duration of counsel being indisposed or even whether the affliction happened during the relevant period of time i.e., the period including 16.03.2022 when the Writ Petition was dismissed for default. Paragraph No.6 of the I.A.No.2 of 2023 admits that the Court was constrained to dismiss the Writ Petition for non-prosecution on 16.03.2022 on account of repeated defaults on the part of the petitioner-Bank.

7. Section 5 of the Limitation Act, 1963, permits admission of an appeal or an application beyond the prescribed period of limitation provided the applicant satisfies the Court that the applicant had sufficient cause for not preferring the appeal or making the application within the prescribed period of limitation.

8. It is settled that condonation of delay is a discretionary relief which the Court can permit subject to satisfaction of the sufficiency of cause shown by the applicant for filing the appeal or application beyond the prescribed period of limitation. While Courts have generally taken a justice-oriented approach in permitting appeals or applications being filed beyond the limitation period, the consensus evident from the decisions is that the applicant must show its *bona fides* and a genuine effect to explain the delay. The length of the delay is not material provided the applicant can prove their diligence in pursuing the application after expiry of the prescribed period of limitation.

9. In the present case, the IAs are bereft of any reasons or grounds for condonation of delay of 542 days. The reason stated with regard to counsel suffering from Covid is also vague. There are no dates or particulars as to when the counsel was actually affected or the length of time during which counsel was indisposed.

There is also no reason as to the steps taken by the counsel after he recovered from Covid (the Court presumes and hopes that the counsel recovered from the Covid since there is absolutely no statement with regard to it).

10. The discretion exercised by Courts in condoning the delay is on a premised appreciation of the attending facts and circumstances including the conduct of the party. In the present case, there is no pleading whatsoever on which discretion can be exercised. A justice-oriented approach is only applicable where there is compelling conduct on the part of the applicant to explain the delay. In the present case, there is none. The petitioner states that there are substantial merits to be tried in the Writ Petition. This alone cannot be a ground for condoning the substantial delay of 542 days.

11. *Collector, Land Acquisition v. Katiji*¹, dealt with the impersonal machinery of the State as a litigant warranting a liberal approach for condoning the delay. So far as *Hemalata Verma v. M/s. ICICI Prudential Life Insurance Co. Ltd. & Another*² has only been shown for its reliance on *Katiji*. In *Gudipati Eko Narayana v.*

¹ (1987) 2 SCC 107

² Civil Appeal No.5131 of 2019, dated 01.07.2019

*Vallapureddy Ravinder Reddy*³ held that delay should be condoned where the reasons given are *bona fide*.

12. No *bona fide* reasons have been given in this case for condonation of the delay of 542 days. We also note that although the Writ Petition was dismissed on 16.03.2022, the present IAs were filed in November, 2023 i.e., after approximately 20 months. There is absolutely no effort on the part of the petitioner to explain the unaccounted for delay. Hence, we deem it fit and proper to dismiss both the IAs.

13. I.A.Nos.1 and 2 are accordingly dismissed. There shall be no order as to costs.

MOUSHUMI BHATTACHARYA, J

GADI PRAVEEN KUMAR, J

DATE: 08.09.2025
TJMR

³ 2020 (6) ALD 483 (TS)

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