

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

CIVIL APPLICATION NO.13867 OF 2015

IN SAST/9590/2015 WITH CA/13873/2015 IN
SAST/9590/2015 WITH WP/1540/2016 WITH SA/45/2021
WITH CA/1295/2021 IN SA/45/2021

JANKIRAM BABURAO PATIL
VERSUS
PANDURANG RAJARAM PATIL AND OTHERS

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Advocate for Applicant : Mr. Bhokarikar Madhav M.
Advocate for respective Respondents : Mr. A. J. Patil.
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CORAM : S. G. MEHARE, J.
DATE : 08.11.2023

PER COURT :-

1. Heard the learned counsel for the applicant and the learned counsel for the respondents.
2. The applicant was the plaintiff before the Trial Court and the appellant before the First Appellate Court. His suit and appeals were dismissed. Thereafter, he preferred the present appeal with an application for condonation of delay of 3420 days.
3. Learned counsel for the applicant would submit that the applicant was unaware of the impugned judgment and decree of the First Appellate Court. He would submit that there were many litigations pending. Those litigations had the effect on

the issues involved in the appeal; he wanted to prefer. Nothing has been pleaded in the application as argued. In the application, it has been simply pleaded that “he is not educated considering the legal rights and almost illiterate in the light of Court litigation having no knowledge about the punctuality of rights and norms of litigation and court matters. The suit was dismissed without proper hearing of the applicant and opportunity of adducing the evidence to them.”

4. To bolster his argument, he relied on the case of ***Esha Bhattacharjee Vs. Managing Committee of Raghunathpur Nafar Academy and others ; 2013 AIR SCW 6158.***

5. Per contra, the contesting respondent has strongly opposed the application. He would submit that the reasons assigned for delay are neither genuine nor plausible. The applicant was the appellant. Hence, it is hard to digest that he had no knowledge about passing the judgment of the First Appellate Court. He has prayed to dismiss the application.

6. This is an application under Section 5 of the Limitation Act. Section 5 of that Act, which prescribes that the delay may be condoned for the ‘sufficient cause’. The burden was on the applicant to prove that there were sufficient causes that restrained him from preferring the appeal. In the case at hand,

there was a delay of more than nine years. He had a case that there were litigations going on. It seems that he was aware of his rights. If he was aware of his rights, his contention that he was illiterate in the light of court litigation appears incorrect. The ground raised by him that the suit was dismissed without proper hearing an opportunity of adducing evidence is not the ground for condonation of delay.

7. In *Esha Bhattacharjee (cited supra)*, the principles have been culled out for considering the application under Section 5 of the Limitation Act. One of the principle culled out, the term "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. It has also been culled out that substantial justice being paramount and pivotal, the technical considerations should not be given undue and uncalled for emphasis. No presumption can be attached to deliberate causation of delay but, gross negligence on the part of the litigant is to be taken note of.

8. One of the principle of gross negligence on the part of the litigant is to be considered in this Case. The person, who was litigating was supposed to be a deligent. He woke up after

around 9 years. He did not establish sufficient cause to prove that he was restrained from preferring the appeal in the Court in prescribed period of limitation. In the peculiar facts and circumstances of the case, the relevant principles culled out in *Esha Bhattacharjee (cited supra)* are applicable. After having gone through the contents of application, there is no iota of pleading what restrained him from preferring appeal in time. The reasons pleaded in the application were not the sufficient cause.

9. For the reasons mentioned above, the Civil Application No.13867 of 2015 for condonation of delay stands dismissed, Civil Application No.13873 of 2015 for stay and the Second Appeal on Stamp stand disposed of accordingly.

10. No order as to costs.

11. List the writ petition, other civil application in other second appeal for admission on 23.01.2024.

(S. G. MEHARE, J.)

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vmk/-