

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

937 CIVIL APPLICATION NO.14412 OF 2022
IN
WRIT PETITION NO. 505 OF 2005

ALKA PRADEEP RATHI
VERSUS
THE ORIENTAL INSURANCE COMPANY LTD AND OTHERS

...
Advocate for Applicant : Mr. Tapan K. Sant
Advocate for Respondents : Mr. Dhananjay Deshpande

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**CORAM : RAVINDRA V. GHUGE AND
SANJAY A. DESHMUKH, JJ.
DATED : 21st APRIL, 2023.**

PER COURT :-

1. This is an application for condonation of delay of 2630 days in filing this Application seeking restoration of the Writ Petition, which was dismissed in default. The cause of action is of 2004.
2. The applicant is the original Petitioner in Writ Petition No. 505 of 2005. She had challenged the order of her removal from service, dated 28.07.2004 and the order dated 24.11.2004, passed by the appellate authority. She was working as an Assistant Typist in the Branch office of Respondent Insurance Company at Shrirampur.
3. After this Petition was filed, an order was passed on 28.1.2005, by issuing **Rule**, made returnable early. Thereafter, the Petitioner preferred a civil application No. 9338 of 2005, seeking an amendment in the Petition. Initially, a notice was issued in the civil

application. As Respondent Nos.1 to 4 were not served in the civil application, notice was reissued on 11.7.2014, made returnable in six weeks. The same was returned unserved for want of time. On 22.8.2014, neither the advocate for the applicant nor the advocate for the Respondents, were present. This court passed an order on 22.8.2014, by considering the application and allowed the amendment. It was directed that the amendment be carried out within two weeks and in default, the Petition would stand dismissed without reference to the court.

4. We have considered the strenuous submissions of the learned advocate for the applicant, so also the submissions of learned advocate for the Respondent Company.

5. It is contended in the application for restoration, which suffers delay of 2630 days, that the civil application No. 9338 of 2005 was in the await service of notice category. By order dated 11.7.2014, this court had reissued notice to the Respondents. The reasons set out in the application for restoration are (a) the application was on board in the await service category on 22.8.2014 and (b) as the matter was in await service category, the learned advocate for the applicant was under the impression that the matter would be adjourned under a common order.

6. What we find from the record is that this court had noted

the absence of the learned advocate for the applicant as well as the opponents in the order dated 22.8.2014. The court itself went through the civil application for amendment and granted liberty to amend with a rider that the amendment should be carried out within two weeks, failing which the Petition would be dismissed, without reference to the court.

7. The learned advocate for the applicant submits that he was under the impression that the matter must have got adjourned. Inadvertently, the order of allowing the amendment was not noticed. The applicant is ready to work out the matter even today.

8. The learned advocate for the Respondents submits that in such matters, if delay is minor, the Courts usually allow the application for restoration. However, in the present case, excluding the Covid lock down period, the delay is of 2630 days, which is almost 7 years and 8 months. Each day's delay need not be explained. But there must be a reasonable and justifiable cause and reason which would convince the court that delay deserves to be condoned.

9. In ***Collector Land Acquisition Anantnag and another vs. Mst. Katiji and others, (1987) 2 SCC 107***, the Hon'ble Supreme Court has held that each days delay is not to be explained. A pragmatic approach has to be adopted to assess whether there are

some reasons available for condonation of delay. In ***Esha Bhattacharjee vs. Managing Committee of Raghunathpur Nafar Academy and others, 2013 (12) SCC 649***, the Hon'ble Supreme Court has culled out certain principles which are to be applied for condonation of delay. The said reasons are as under:-

- "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 encapsule 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 scrutinized 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."

10. There was a National lock down on account of Covid pandemic from 24.3.2020 till January 2021. Excluding this period, the delay is of 2630 days. The delay appears to be inordinate. The explanation set out would not fit into the principles set out in ***Esha Bhattacharjee (supra)***.

11. In view of the above, this application is rejected.

(SANJAY A. DESHMUKH, J.)

(RAVINDRA V. GHUGE , J.)

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