

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****WRIT PETITION NO. 1486 OF 2023**

Sandip Vishwas Shinde

.. Petitioner

Versus

Shankar Punalik Thorave

.. Respondent

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- Mr. Vivek V. Salunke for Petitioner
 - Mr. Aniket Ranade for Respondent
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CORAM : MILIND N. JADHAV, J.**DATE : FEBRUARY 14, 2023.****P.C.:**

1. Heard Mr. Salunke, learned Advocate for Petitioner and Mr. Ranade, learned Advocate for Respondent.

2. The present Writ Petition takes exception to the Judgment and order dated 07.12.2022 passed by the Maharashtra Revenue Tribunal (MRT), Mumbai in revision proceedings challenging the grant of application for condonation of delay by the learned SDO (Sub Divisional Officer) in filing the tenancy appeal before the learned SDO. The delay of 2 years 8 months has been condoned by the learned SDO which was challenged by the Respondent No.1 before the MRT. The learned MRT in its wisdom allowed the revision and set aside the order passed by the SDO, thereby ousting the Petitioner's valuable substantive right of filing the statutory tenancy appeal under the

provisions of the Maharashtra Tenancy and Agricultural Lands Act, 1948 (MTAL).

3. Be that as it may, Mr. Ranade has raised 3 specific objections namely:

- (i) that the impugned order has been correctly passed in the facts and circumstances of the present case considering that the Petitioner is guilty of material suppression and non disclosure of relevant facts, namely that during the interregnum Petitioner had filed a substantive suit for injunction before the Civil Court in respect of the same subject property on the ground that he was entitled to the subject property as also being in possession of the same. He would submit that without pursuing the Civil Court remedy the Petitioner desired to withdraw the said suit. He would submit that the Petitioner had filed a pursis for withdrawal of the said suit, however the Civil Court dismissed the said suit for default;
- (ii) that the discretion used by the learned SDO in passing the order allowing the application for condonation of delay of 2 years 8 months was not lawfully exercised in view of the fact that the Petitioner was seized of the original order passed by the MTAL as also the application filed by the Respondent for

fixation of purchase price and therefore the delay was deliberate and did not deserve condonation;

(iii) that the application for seeking condonation of delay is devoid of specific reasons and the conduct of the Petitioner would not entitle him to seek condonation of delay in the present case.

4. Mr. Salunke has drawn my attention to the application filed by the Petitioner which is at Exh.D page No.61 to the Petition. Though several grounds have been taken in the application, *inter alia*, the merits of the matter are not required to be gone into at this stage. Perusal of the said application would reveal that Petitioner has candidly stated the ground for delay in paragraph No.10 of the application. Perusal of the application reveals that the Petitioner has not unnecessarily attempted to explain the delay, save and except, clearly stating the reason for the delay. It has been observed by this Court that whenever such applications are made by litigants / parties they attempt to give unnecessary explanations in order to seek condonation and discretion of the Court. What is pertinent to note in the present case is that the Petitioner is aggrieved with his substantive rights having being disallowed by the MTAL in the 70-B proceedings and he has stated the specific reason for the delay. The application mentions and sets the reasons therefor, however because there is a

delay of 2 years 8 months it cannot be said that sufficient cause has not been shown by the Petitioner. It needs to be mentioned that statutory First Appeal is an important substantive right of any litigant, especially in quasi judicial proceedings which in fact would determine substantive rights of the parties.

5. In view of the above and on perusal of the record of the case, if the impugned order is sustained, it would deprive the Petitioner a very valuable and substantive right of agitating his grievance in the First Appeal. Such cannot be the intention of the legislature, especially when the valuable substantive right in filing the First Appeal is provided to the parties. On the aspect of delay, undoubtedly delay needs to be explained and it cannot be a matter of casualness for any party while making the application seeking condonation. Every day's delay also need not be explained once the reasons are stated and sufficient cause is shown to the satisfaction of the Court/Authority, in this case.

6. Perusal of the order passed by the learned SDO reveals one more thing, namely the fact that the learned SDO also considered the documents filed by both the parties. The learned SDO has stated in his order while condoning the delay that principles of natural justice need to be followed and an opportunity therefore needs to be given to the aggrieved party.

7. The learned SDO has utilised his discretion in passing the order dated 21.06.2022. The learned MRT has however by its order dated 07.12.2022 set aside the same.

8. Mr. Ranade has referred to and relied upon the decision of the Supreme Court in the case of ***Mahanagar Telephone Nigam Limited Versus State of Maharashtra and others*** passed in Civil Appeal No. 5428 of 2013 and has drawn my attention to paragraph No.20 and 21 of the said decision, wherein the Supreme Court in the facts of that case rejected the prayer for condonation of delay of 401 days in view of the solely unsatisfactory explanation and suppression of material fact by the party. I have perused the said decision. The decision undoubtedly cannot *ipso facto* be made applicable to the facts of the present case. It is clearly distinguishable on the facts namely because in that case the complexity of the facts was based on allotment / development of the plots, acquisition of some portions of the said plots, delivery and possession of the acquired land, etc. That apart, in that decision substantive rights emanating from the development agreement between the parties, eligibility of the slum dwellers depending upon their eligibility as also rehabilitation was also in issue.

9. Such is not the case herein. In view of the decision of the Supreme Court in the case of ***Esha Bhattacharjee Vs. Managing Committee of Raghunathpur Nafar Academy and Ors.***¹, I am inclined

¹ (2013) 12 SCC 649

to refer to the principles laid down in this decision in paragraph No. 21 on the basis of the entire case law on the subject of condonation of delay prior to the said decision. That apart, I would also like to refer to paragraph No.22 of the said decision which lays down additional guidelines for considering applications for condonation of delay.

10. Paragraph Nos. 21 and 22 of the said case are reproduced below for convenience:-

“21. From the aforesaid authorities the principles that can broadly be culled out are:

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 bonafides 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.

22. To the aforesaid principles we may add some more guidelines taking note of the present day scenario. They are: -

a) An application for condonation of delay should be drafted with careful concern and not in a half hazard manner harbouring the notion that the courts are required to condone delay on the bedrock of the principle that adjudication of a lis on merits is seminal to justice dispensation system.

b) An application for condonation of delay should not be dealt with in a routine manner on the base of individual philosophy which is basically subjective.

c) Though no precise formula can be laid down regard being had to the concept of judicial discretion, yet a conscious effort for achieving consistency and collegiality of the adjudicatory system should be made as that is the ultimate institutional motto.

d) The increasing tendency to perceive delay as a non- serious matter and, hence, lackadaisical propensity can be exhibited in a non-challant manner requires to be curbed, of course, within legal parameters.”

11. In view of the above, I have no hesitation in arriving at the conclusion that the delay of 2 years 8 months, in the facts and

circumstances of the present case deserve to be condoned as sufficient cause has been shown to the satisfaction of the Competent Authority i.e. the SDO. The order of the SDO is therefore sustained.

12. In view of the above observations and findings and the impugned order dated 07.12.2022 passed by the MRT requires to be interfered with. The impugned order is thus quashed and set aside.

13. Writ Petition is allowed in the aforesaid terms.

14. Writ Petition disposed.

[MILIND N. JADHAV, J.]

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