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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**INTERIM APPLICATION NO.30641 OF 2022
IN
FIRST APPEAL (ST.) NO.10218 OF 2021
WITH
INTERIM APPLICATION NO.30642 OF 2022**

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The Municipal Corporation of
Greater Mumbai & Anr.

... Appellants

V/s.

Kalati Construction Pvt. Ltd.

... Respondent

Mr. S.S. Pakale with Mr. Santosh Parad for the
appellants.

Mr. Prashant P. Kulkarni for the respondent.

CORAM : AMIT BORKAR, J.

DATED : FEBRUARY 8, 2023

PC.:

1. Interim Application No.30641 of 2022 is filed by the applicants seeking condonation of two (2) year and 325 days' delay in filing the present first appeal.

2. The sufficient cause pleaded in the interim application is that the matter was put up before Appeal Committee on 18th August 2018. The Committee decided to prefer appeal on 18th August 2018. Thereafter, on 5th September 2018 a letter/note for preferring first appeal was sent to the legal department. The file for filing the first appeal was received by the advocate on 11th September 2018.

3. The interim application as was filed initially contained no explanation after 11th September 2018 till filing of first appeal, i.e. 29th April 2021. Therefore, this Court permitted the applicant to file additional affidavit to furnish sufficient cause for condonation of delay in filing the first appeal. The applicant has filed additional affidavit stating that the final decision to file first appeal was taken on 29th March 2019. The letter was again sent to the Law Department on 8th August 2019. The concerned officer realized in the month of November 2019 that the appeal was not filed and, therefore, requested the Law Department to take immediate steps. The Law Department, therefore, prepared necessary paper-book and deputed competent officer to attend the Court for affirmation by letter dated 26th February 2020.

4. It is stated that the concerned advocate had received file for filing first appeal on 11th September 2018. The additional reason mentioned in the affidavit that the final decision to file the appeal was taken on 29th March 2019 and thereafter the concerned officer issued letter on 13th November 2019. Thereafter, there was Covid pandemic from March 2021. It is submitted that the Apex Court in *Suo Motto* PIL Petition No.3 of 2020 extended period of limitation in filing of proceedings.

5. Learned advocate for the respondent strongly objected to the condonation of delay. According to him, the reasons mentioned in the interim application filed initially and the additional explanation tendered by additional affidavit dated 6th February 2023 are inconsistent. He submitted that after September 2019 there is no explanation as to why the first appeal was filed on 29th

April 2021.

6. In rejoinder, it is submitted by the learned advocate for the applicant that in view of the judgment of the Apex Court in Miscellaneous Application No.21 of 2022 in Suo Motu Writ Petition (C) No.3 of 2020 (**In Re: Cognizance for extension of limitation**) dated 10th January 2022, the Apex Court clarified that in cases where limitation would have expired during the period between 15th March 2020 and 28th February 2022, notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 1st March 2022. He, therefore, submitted that the first appeal having been filed on 29th April 2022, period from 15th March 2020 till 19th April 2021 needs to be excluded as per clause (III) of the order of the Apex Court dated 10th January 2022.

7. Having heard learned advocates for the parties, it appears that as stated in the initial interim application, concerned advocate received papers for preparation of the first appeal on 11th September 2018. The applicant has stated in the additional affidavit that final decision regarding filing of first appeal was taken only on 29th March 2019. He placed on record decision to that effect taken on 29th March 2019. He also placed on record communication dated 16th April 2019 which is internal correspondence which indicates that the necessary papers for filing the first appeal had been sent to the concerned persons. It is stated that the concerned officer was appointed on the post on 9th September 2019 sought clarification regarding the status of filing of first appeal on 13th November 2019.

8. On perusal of the reasons mentioned by the applicant, it appears that there is element of laxity on the part of the applicant. However, since the applicant is a public body representing cause of general public, some latitude needs to be shown to the applicant. The prejudice caused to the respondent can be compensated by directing the applicant to pay costs to the respondent.

9. At this stage, it would be profitable to refer to the judgment of the Supreme Court in **Esha Bhattacharjee v. Managing Committee of Raghunathpur Nafar Academy & Ors.** reported in (2013) 12 SCC 649. The Apex Court in paragraph 21 broadly culled out principles to be adopted while condoning delay. The Apex Court in paragraph 21 held thus:

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

21.1 (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.

21.2 (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.

21.3 (iii) Substantial justice being paramount and pivotal the technical considerations should not be given undue and uncalled for emphasis.

21.4 (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.

21.5 (v) Lack of bona fides imputable to a party seeking

condonation of delay is a significant and relevant fact.

21.6 *(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.

21.7 *(vii)* The concept of liberal approach has to encapsulate the conception of unreasonable and it cannot be allowed a totally unfettered free play.

21.8 *(viii)* There is a distinction between inordinate delay and a delay of short duration of 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.

21.9 *(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.

21.10 *(x)* If the explanation offered is concocted or the ground urged in the application are fanciful, the courts should be vigilant not to expose the other side unnecessarily to fact such a litigation.

21.11 *(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.

21.12 *(xii)* The entire gamut of facts are to be carefully scrutinised and the approach should be based on the paradigm of judicial discretion which is founded on objective reasoning and not on individual perception.

21.13 *(xiii)* The State or a public body or an entity representing a collective cause should be given some acceptable latitude.”

10. On perusal of the parameters laid down by the Apex Court, it

is clear that the Court must keep in mind adherence to strict proof should not affect public justice and cause public mischief. In paragraph 21.13 it has been laid down that the State or a public body or an entity representing a collective cause should be given some acceptable latitude. Therefore, in my opinion, excluding the period of Covid-pandemic as directed in clause (III) of the order of the Apex Court dated 10th January 2022 in Suo Motu Writ Petition (C) No.3 of 2022, the applicant has made out sufficient cause. However, the respondent needs to be compensated in terms of costs quantified at Rs.20,000/- (Rupees Twenty Thousand Only).

11. The interim application is, therefore, allowed in terms of prayer clause (a), subject to payment of costs of Rs.20,000/- to be paid by the applicant to the respondent within six (6) weeks from today.

(AMIT BORKAR, J.)