

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO.782 OF 2022

(SUNIL RAMNATH TANDALE...VS.. MUNICIPAL COUNCIL, NANDURA & ANR.)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri Rahul Tajne, Advocate for Petitioner.
Shri Dheeraj I. Jain, Advocate for Respondent No.1.
Shri K.L.Dharmadhikari, A.G.P. for Respondent No.2.

CORAM : ANIL S. KILOR, J.
DATED : JANUARY 31, 2023.

1. Heard.
2. The impugned order, dated 10/11/2021 passed below Exh.5 by the Civil Judge Senior Division, Malkapur rejecting application for condonation of delay in filing restoration application, is under challenge in this writ petition.
3. The learned counsel for the petitioner points out that there was a delay of forty days in filing application for restoration of civil suit and the application for condonation of delay. It is submitted that applications were rejected on the ground that out of forty days, delay of 20 days has not been explained by filing necessary documents. He, therefore, submits that it is settled law that in the matter of condonation of delay, the Court shall adopt liberal and pragmatic approach. In the circumstances, he prays for condonation of delay in filing the application for restoration of the suit.

4. On the other hand, the learned counsel for the respondent No.1 strongly opposed the application and supports the impugned order.

5. In the case of *Esha Bhattacharjee ..vs.. Raghunathpur Nafar Academy*, reported in (2013)12 SCC 649 the Hon'ble Supreme Court of India has 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 reasonableness 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 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.*

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 grounds urged in the application are fanciful, the courts should be vigilant not to expose the other side unnecessarily to face 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 scrutinized 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.*

6. From the above observations of the Hon'ble Supreme Court of India it is clear that in the matters of delay the Court shall adopt liberal and pragmatic approach

if the sufficient reasons are shown. In this case, the delay has been properly explained and sufficient cause is shown by the plaintiff and therefore, on a technical ground the trial Court ought not to have rejected the application. In the circumstances, I pass the following order:

- i) The writ petition is allowed.
- ii) The impugned order dated 10/11/2021, passed by Civil Judge Senior Division, Malkapur is hereby quashed and set aside, consequently the application Exh.5 is allowed. The delay caused in filing restoration application is condoned.

The Writ Petition is **disposed of** accordingly.
No order as to costs.

JUDGE

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