



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

WRIT PETITION NO. 2178 OF 2020

1. Shri Ashok S/o. Motiram Mande,
Aged 52 yrs., Occ- Business,
2. Shri Ramesh S/o. Motiram Mande,
Aged 48 yrs., Occ- Business,
3. Shri Pravin S/o. Motiram Mande,
Aged 40 yrs., Occ- Business,

All the petitioners above named are R/o.
Mudliar Layout, Shanti Nagar, Nagpur.

.... **PETITIONERS.**

// **VERSUS** //

1. Shri Jitendrakumar S/o.Tarachand Kothari
Aged : Major, Occ. : Business,
R/o. C/o. M/s. Gurudeo Industries,
24, Wardhman Nagar, Nagpur.
2. Shri Murlidhar S/o. Baburao Shende,
Aged : Major, R/o. 39, Great Nag Road,
Immamvada, Nagpur.

.... **RESPONDENTS.**

Shri P.S.Khubalkar, Advocate for Petitioners.
Shri H.D.Dangre, Advocate for Respondent No.1.
None for Respondent No.2.

CORAM : ANIL S. KILOR, J.
DATED : AUGUST 09, 2023

ORAL JUDGMENT :

1. Heard.

2. **RULE.** Rule made returnable forthwith. Heard finally by consent of the parties.

3. The application filed by the petitioners for condonation of delay of 873 days i.e. 2 years, 7 months and 9 days, caused in filing application for restoration of appeal, came to be rejected vide order dated 13/12/2019 passed by the Principal District Judge, Nagpur in M.C.A. No. 131 of 2019, the same is the subject matter of this petition.

4. The suit for specific performance namely Special Civil Suit No. 36 of 2001, filed by the respondent No.1 against one Murlidhar Shende and the petitioners, came to be decreed vide judgment and decree dated 08/09/2005.

5. The correctness of the same was questioned in First Appeal No. 673 of 2005 filed before this Court. However, it was transferred to the District Court by order dated 04/02/2012 in view of the amendment to the pecuniary jurisdiction of the Courts.

6. On transfer, the First Appeal was registered as Regular Civil Appeal No. 279 of 2012.

7. The said appeal was dismissed in default vide order dated 29/07/2016. Therefore, the petitioner moved an application for restoration along with the application for condonation of delay.

8. The said application came to be rejected vide impugned order below Exh.1 dated 13/12/2019 passed by the Principal District Judge, Nagpur, which is the subject matter of the present writ petition.

9. Shri Khubalkar, learned counsel for the petitioners submits that though satisfactory and sufficient reasons were given for condonation of delay, the learned appellate Court erroneously denied to condone the delay. It is submitted that it is the settled law that in the matter of condonation of delay the Court shall adopt the liberal and pragmatic approach. It is further submitted that the impugned order is contrary to the above referred well settled law. In support of his submission he has placed reliance on the judgment of the Hon'ble Supreme Court of India in the case of *Esha Bhattacharjee ..vs.. Raghunathpur Nafar Academy*, reported in **(2013) 12 SCC 649**.

10. Per contra, Shri Dangre, learned counsel for the respondent No.1 argues that the reasons given in the application are vague and the sufficient details have not been given.

11. It is submitted that the petitioner had knowledge about the transfer of the appeal to the District Court and despite the same, necessary and required steps were not taken to pursue the matter. It is submitted that in such matters, blaming the Advocate is not a sufficient ground. He, therefore, submits that the learned appellate Court has rightly rejected the application. In support of his arguments, he has placed reliance on the judgments in the cases of (1) *Moddus Media Pvt. Ltd. ..vs.. Scone Exhibition Pvt. Ltd.*, reported in **2017 SCC OnLine Del 8491**, (2) *Chennai Metropolitan Water Supply & Sewerage Board ..vs.. T.T. Murli Babu*, reported in **(2014)4 SCC 108**.

12. Shri Dangre, learned counsel for the respondent No.1 while pointing out the mitigating circumstances, has submitted that firstly the petitioners purchased the suit property during pendency of the suit and secondly, after the decree, the executing Court, vide order dated 08/09/2005 directed to execute Sale Deed in favour of the respondent No.1 and accordingly it was executed on 08/03/2019 and thereby the decree has been satisfied, resultantly the rights of the respondent No.1 have been crystallized. He therefore, submits that no error has been committed by the learned lower Appellate Court in rejecting the

application for condonation of delay. Accordingly, he prays for dismissal of the present writ petition.

13. The Hon'ble Supreme Court of India, has laid down certain principles while condoning delay, in the case of *Esha Bhattacharjee* (supra) which read 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.”*

14. The Hon’ble Supreme Court of India in the case of *Chennai Metropolitan Board* (supra) has held thus :

“16. Thus, the doctrine of delay and laches should not be lightly brushed aside. A writ court is required to weigh the explanation offered and the acceptability of the same. The court should bear in mind that it is exercising an extraordinary and equitable jurisdiction. As a constitutional court it has a duty to protect the rights of the citizens but simultaneously it is to keep itself alive to the primary principle that when an aggrieved person, without adequate reason, approaches the court at his own leisure or pleasure, the Court would be under legal obligation to scrutinize whether the lis at a belated stage should be entertained or not. Be it noted, delay comes in the way of equity. In certain circumstances delay and laches may not be fatal but in most circumstances inordinate delay would only invite disaster for the litigant who knocks at the doors of the Court. Delay reflects inactivity and inaction on the part of a litigant – a litigant who has forgotten the basic norms, namely, “procrastination is the greatest thief of time” and second, law does not permit one to sleep and rise like a phoenix. Delay does bring in hazard and causes injury to the lis.

17. ... We repeat at the cost of repetition that remaining innocuously oblivious to such delay does not foster the cause of justice. On the contrary, it brings in injustice, for it is likely to affect others. Such delay may have impact on others’ ripened rights and may unnecessarily drag others into litigation which in acceptable realm of probability, may have been treated to have attained finality. A court is not expected to give indulgence to such indolent persons - who compete with “Kumbhakarna” or for that matter “Rip Van Winkle.” In our considered opinion, such delay does not deserve any indulgence and on the said ground alone the writ court should have thrown the petition overboard at the very threshold.” (emphasis supplied)

15. The High Court of Delhi in the case of *Moddus Media* (supra) has held thus :

“12. In these presents, the allegation of the appellant/defendant company is that their lawyer has stopped appearing after 10.11.2014. It is also alleged that after the impugned judgment and decree dated 31.08.2015, their lawyer told them that the suit of the respondent/plaintiff company has been dismissed and they requested to supply them copies of order and decree. These allegations are not found mentioned in the complaint lodged with the Bar Council of India. If their lawyer stopped appearing from 10.11.2014, the appellant/defendant company should have contacted their lawyer or engaged some other one in the matter or at least they should have started appearing in person but they did not bother to inquire from their previous counsel as to why he stopped appearing w.e.f. 10.11.2014. If they were informed by their counsel after the decision in the suit and copy of order was not supplied, they should have gone to lawyer personally or to court to obtain copies of orders or should have taken assistance of other lawyer. But they were not serious at all.

13. The litigant owes a duty to be vigilant of his rights and is also expected to be equally vigilant about the judicial proceedings pending in the court of law against him or initiated at his instance. The litigant cannot be permitted to cast the entire blame on the Advocate. It appears that the blame is being attributed on the Advocate with a view to get the delay condoned and avoid the decree. After filing the civil suit or written statement, the litigant cannot go off to sleep and wake up from a deep slumber after passing a long time as if the court is storage of the suits filed by such negligent litigants. Putting the entire blame upon the advocate and trying to make it out as if they were totally unaware of the nature or significance of the proceedings is a theory put forth by the appellant/applicant/defendant company, which cannot be accepted and ought not to have been accepted. The appellant is not a simple or rustic illiterate person but a Private Limited Company managed by educated businessmen, who know very well where their interest lies. The litigant is to be

vigilant and pursue his case diligently on all the hearings. If the litigant does not appear in the court and leaves the case at the mercy of his counsel without caring as to what different frivolous pleas/defences being taken by his counsel for adjournments is bound to suffer. If the litigant does not turn up to obtain the copies of judgment and orders of the court so as to find out what orders are passed by the court is liable to bear the consequences. (emphasis supplied)

16. From the above referred observations, it is evident that the Hon'ble Supreme Court of India in the case of *Esha Bhattacharjee* (supra) has observed that 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. Further it is observed that, lack of bona fides imputable to a party seeking condonation of delay is a significant and relevant fact. The Hon'ble Supreme Court has further observed that the conduct, behaviour and attitude of a party relating to its inaction or negligence are relevant factors to be taken into consideration and if the explanation offered is concocted or the grounds urged in the applications are fanciful, the Court should be vigilant not to expose the other side unnecessarily to face such litigation.

17. From the above referred observations, it is also evident that the litigant owes a duty to be vigilant of his rights and is also expected to be equally vigilant about the judicial proceedings pending in the Court

of law against him initiated at his instance. The litigant cannot be permitted to cast the entire blame on the advocate.

18. In the teeth of the above referred well settled law, I revert back to the facts of the present case. In the application for condonation of delay, the reasons for causing delay are as under:

“6. It is submitted that, before the Hon’ble High Court of Judicature at Bombay, Nagpur Bench, Nagpur, they had engaged Advocate Shri P.C. Madkholkar who has been representing them so long as the matter was pending before the Hon’ble High Court and the matter was prosecuted diligently, it is further submitted that, Shri P.C. Madkholkar Advocate had informed the Appellants that he does not appear in District Court and the Appellants should engage Advocate of their choice. The Appellants approached one the Advocate known to them, who informed that they should contact him once they receive the notice from the Court.

7. The Applicants most respectfully submits that, the Appellants waited to receive notice from the Hon’ble Court, however, did not received any notice. The Applicants submits that they also approached their Advocate who kept on saying that you will receive notice from the Hon’ble Court as the matter has been transferred from the High Court to District Court on account pecuniary jurisdiction.

8. The Applicants submits that, sensing something serious they approached another Advocate in third week of December 2018, who tried to trace the matter on the official website of the ecourts.gov.in and came to know that the web site is showing that the matter is disposed off on 29th July 2016.

9. Upon coming to know about the disposal of the Appeal, it was advised to the Applicants to obtain the certified copies of the relevant documents,

accordingly necessary application was filed on 20.12.2018 and the certified copies were received on 14.01.2019. Soon thereafter instant application was drafted and is being filed without any delay. However, there is delay in filing the restoration application of about 2 years 7 months and 9 days, which is purely unintentional and therefore needs to be condoned in the interest of justice.”

19. From the above referred reasons stated in the application, it can be seen that the blame is attributed on the advocate. Moreover, the application is vague and no details are given when the petitioner contacted the lawyer and the dates or the period when the advocate allegedly asked the petitioner to wait for the notice from the Court as the matter has been transferred.

20. The record also shows that the earlier lawyer had given intimation as regards transfer from High Court to learned District Judge. Despite the same, it appears that the petitioner had not taken necessary steps in the matter to track the matter and pursue the same.

21. It is pertinent to note that after passing of the decree on 08/09/2005 the respondent No.1 filed an application on 06/10/2005 for grant of permission to deposit the balance consideration of Rs.7,25,000/-. The respondent No.1 accordingly deposited the said

amount vide pay order dated 06/10/2005. Thereafter, the execution proceedings was filed and in the said proceedings on 08/03/2019 Sale Deed in respect of suit property was executed and registered in favour of respondent No.1.

22. Thus, it can be seen that the rights have been crystallized in favour of the respondent No.1 and if the delay is condoned, great prejudice would be caused to the respondent No.1.

23. One more fact goes against the petitioners that the petitioners purchased the suit property during pendency of the suit, in the year 2001.

24. In the circumstances, I do not find any error committed by the learned lower appellate Court in rejecting the application for condonation of delay in filing restoration application. Accordingly, I pass the following order:

The writ petition is **dismissed**. No order as to costs.

(ANIL S. KILOR, J)