

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

CIVIL APPLICATION (CAS) NO. 895 OF 2022
IN
SECOND APPEAL (ST.) NO. 12768 OF 2022

ROSHAN S/O. BIHARILAL JANGALE

...VERSUS...

GOWARDHAN S/O. DHARAMDAS CHOUBE

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

Court's or Judge's order

Shri S.B.Dhande, Advocate along with Smt. Archana P. Murrey, Advocate for applicant/appellant.
Shri P.A.Abhyankar, Advocate for respondent.

CORAM : SMT. M. S. JAWALKAR,J.

DATE : 11th APRIL, 2023

By this application, the applicant prays for condonation of delay of about 1419 days in filing the Second Appeal.

2. It appears that learned Adhoc District Judge, Bhandara allowed the First Appeal bearing R.C.A. No. 70/2011 on 08/07/2016 filed by the non-applicant/respondent, however, no steps had been taken by the applicant till August, 2021 for filing the Second Appeal.

3. First reason put forth by the applicant is that, he was busy in government construction work at Andhra Pradesh in the year 2018. However, there is no reason given for the delay since 2016 to August, 2018. It is not at all stated, what was the reason which precluded to the applicant to file the Second Appeal. The application is filed in a very casual manner. Further, it is mentioned that, due to

Covid-19 pandemic situation, the applicant could not approach the counsel. There is no date or year mentioned in the application when the applicant approached to the counsel. For the reason put forth, in respect of heart ailment which he was suffering, he has placed on record the discharge summary, which is dated 07/07/2015. The said discharge summary is prior to passing of the judgment in R.C.A. No. 70/2011. This cannot be the reason for not filing the Second Appeal. On his own showing, he was busy in August, 2018 in some construction work at Andhra Pradesh. As such, there was no reason that, he would not be given any instruction for filing the Second Appeal to his local counsel. Also, he applied for certified copy itself on 28/09/2021. As such, there is no satisfactory or justifiable reason for not filing of the Second Appeal for the period of more than 4 years.

4. Learned counsel for the non-applicant/respondent vehemently opposed the application and relied on the citation in the case of **Basawaraj and anr. V/s. The Spl. Land Acquisition Officer** reported in **AIR 2014 Supreme Court 746** in support of his contention that the application is liable to be rejected for want of sufficient cause. In the said case, Hon'ble Apex Court in para 9 held that,

“9. Sufficient cause is the cause for which defendant could not be blamed for his absence. The meaning of the word “sufficient” is “adequate” or “enough”, inasmuch as may be necessary to answer the purpose intended. Therefore, the word “sufficient” embraces no more than that which provides a platitude, which when the act done suffices to accomplish the purpose intended in the facts and circumstances existing in a case, duly examined from the view point of a reasonable standard of a cautious man.

.....

However, the facts and circumstances of each case must afford

sufficient ground to enable the Court concerned to exercise discretion for the reason that whenever the Court exercises discretion, it has to be exercised judiciously. The applicant must satisfy the Court that he was prevented by any “sufficient cause” from prosecuting his case, and unless a satisfactory explanation is furnished, the Court should not allow the application for condonation of delay. The Court has to examine whether the mistake is bona fide or was merely a device to cover an ulterior purpose.”

5. Learned counsel for the applicant relied on citation in the case of ***Esha Bhattacharjee V/s. Managing Committee of Raghunathpur Nafar Academy and ors.*** reported in ***(2013) 12 SCC 649*** in support of his contention that the application for condonation of delay be liberally dealt with. There should be 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. However, in the said judgment, the Hon’ble Apex Court in para nos. 18 and 19 has held that,

“18.

24) *What colour the expression sufficient cause would get in the factual matrix of a given case would largely depend on bona fide nature of the explanation. If the Court finds that there has been no negligence on the part of the applicant and the cause shown for the delay does not lack bona fides, then it may condone the delay. If, on the other hand, the explanation given by the applicant is found to be concocted or he is thoroughly negligent in prosecuting his cause, then it would be a legitimate exercise of discretion not to condone the delay.*

19. *Eventually, the Bench upon perusal of the application for condonation of delay and the affidavit on record came to hold that*

certain necessary facts were conspicuously silent and, accordingly, reversed the decision of the High Court which had condoned the delay of more than seven years.”

6. In the present matter as discussed earlier, there is no explanation for the period from 08/07/2016 i.e. from passing of the judgment till August, 2018 i.e. there is no explanation for these two years' period. Though it is submitted that he was suffering with heart disease but, discharge card shows that he was discharged in the year 2015 that means before passing of the judgment. Moreover, there is his own submission about engagement in some government construction work at Andhra Pradesh which falsifies his ground that it was due to his ill-health, he was unable to take any recourse to file Second Appeal. Further the ground, he has raised about Covid-19 pandemic due to which he was unable to file Second Appeal but he has not explained the reason for delay for the period of two years prior to Covid-19 pandemic i.e. from 08/07/2016 till August, 2018. In view thereof, no benefit can be given to the applicant of Covid-19 pandemic. The total delay is of 1419 days. There is no reason given for two years' period and for the subsequent period, the reasons given are not at all sufficient to condone the delay. In view of these, the principle laid down in the above preferred citation that there is no sufficient cause shown by the applicant to condone the delay of 1419 days. As such, the application stands dismissed. No order as to costs.

(Smt. M.S. Jawalkar, J.)