



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR
WRIT PETITION NO. 555 OF 2023**

1. Smt. Santoshkumari Wd/o Dindayal Deshraj
(Since deceased)
2. Ku. Padmavati D/o Dindayal Deshraj,
Aged about 62 years, Occ. Retired
3. Ku. Ragini D/o Dindayal Deshraj
Aged about 60 years, Occ. Retired
4. Ku. Meenakshi D/o Dindayal Deshraj,
Aged about 58 years, Occ. Retired
5. Ku. Aruna D/o Dindayal Deshraj
Aged about 56 years, Occ. Teacher
6. Ku. Arupama D/o Dindayal Deshraj,
Aged about 54 years, Occ. Service No.2 to 6
all are R/o Gandhi Chowk, Sadar, Nagpur

...Petitioners

// VERSUS //

1. Shri Bhaskar S/o Anandrao Rasekar, Prop.
M/s B.J.Construction R/o 42, Dhangarpura,
Deo Nagar, Nagpur
2. Mohd. Arifbhai s/o Abdul Shakoor,
Aged about 60 years, Occ. Business
R/o Gankakhet, Nagpur (New address: Flat
No.102, Girish Height, Kamptee Road,
Nagpur)
3. Smt. Pratibha Wd/o Keith Albert (Since
deceased) through her legal heirs
- 3a. Parikshit s/o Keith Albert,
Aged about 40 years, Occ. Business
- 3b. Dushyant s/o Keith Albert,
Aged about 40 years, Occ. Business
- 3c. Tejaswani d/o Keith Albert,
Aged Major, Occ. Not known

No.3(a) to 3(c) are R/o Plot No. 59,
K.T.Nagar, Katol Road, Nagpur

4. Shri C.V.Kale, Sole Arbitrator, having its office
and residence at Plot No. 47, Ambazari
Layout, Nagpur

... Respondents

Shri R.M.Bhangde, Advocate for the petitioners.

Shri A.S.Jaiswal, Senior Advocate assisted by Ms. Radhika Bajaj, Advocate
and Shri Ramaswamy Sundaram, Advocate for the respondents.

CORAM : ANIL S. KILOR, J.

Reserved on : 27th September, 2023.

Pronounced on : 29th November, 2023.

ORAL JUDGMENT :

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

2. The Order Below Exhibit 1 dated 4th November, 2022 passed
by the learned District Judge, Nagpur in Miscellaneous Civil Application
No. 533 of 2021, rejecting the application for condonation of delay in
filing the application for restoration of Miscellaneous Civil Application
No. 540 of 2003, is under challenge in this writ petition.

3. The brief facts of the present case are as under:

The petitioners filed Misc Civil Application No. 540 of 2003
under the Arbitration and Conciliation Act, 1996 (in short hereinafter
referred as 'Arbitration Act, 1996') raising a challenge to the order passed
by the sole arbitrator in the arbitration proceeding which was initiated at
the request of the respondent nos. 2 and 3 whereby the sole arbitrator

allowed the claim for specific performance of contract of the respondent nos. 2 and 3.

4. The said Misc. Civil Application No. 540 of 2003 was dismissed in default for want of prosecution on 30th April, 2016. Thereupon, for want of knowledge about the dismissal of the said proceeding, the delay has been caused in moving application for restoration.

5. The delay was of five years and 130 days and accordingly the application under Section 5 of the Limitation Act, 1963 was moved for condonation of delay, which came to be rejected by the learned District Judge, Nagpur vide impugned order dated 4th November, 2022.

6. From the record, it is apparent that because of stay granted by this Court to the Misc. Civil Application No. 540 of 2003 filed by the petitioner under Section 34 of the Arbitration Act, 1996, the matter was not proceeded for the period 16th October, 2006 to 19th March, 2016 i.e. for more than nine and half years.

7. The order sheet shows that on 19th March, 2016 the case was adjourned because of stay and it was posted on 25th April, 2016. On 25th April, 2016 the counsel for the applicant was absent and the matter was posted for next date i.e. 26th April, 2016. On 26th April, 2016 again the counsel for the petitioner was absent and thereafter the matter was fixed for 30th April, 2016 on which date the said Miscellaneous Civil Application was dismissed.

8. Interestingly, on perusal of the ordersheet of Miscellaneous Civil Application No. 540 of 2003, it is revealed that from 10th September, 2003 till the dismissal of the said Miscellaneous Civil Application No. 540 of 2003, on all the dates the Court has adjourned the matter for minimum period of one month. Even after the stay was granted by this Court to the said proceeding the matter was adjourned for a period of one month on almost on each occasion from 16th October, 2006 till 19th March, 2016. However, after the stay was vacated after 10 years, when the matter was listed first time on 25th April, 2016, it was adjourned for next day i.e. on 26th April, 2016 and thereafter for 30th April, 2016. Since, on all the three dates i.e. 25th April, 2016, 26th April, 2016 and 30th April, 2016, the counsel for the petitioner was not present, the said proceeding was dismissed in default.

9. When the proceeding was stayed for 10 years and on vacation of such stay, there is no justifiable reason recorded by the learned District Judge to proceed with the matter hurriedly and dismissing the same within five days after the stay was vacated.

10. There is further nothing on record to justify the reason to fix the matter thrice within six days. Whereas, on earlier on every occasion it was adjourned for atleast one month.

11. The learned District Judge while dismissing the application for condonation of delay in filing restoration application has ignored the above important aspect of the matter.

12. The learned District Judge while rejecting the application for condonation of delay has held that in the Civil Revision Application No. 116 of 2017, there was a mention of dismissal of Miscellaneous Civil Application No. 540 of 2003. It is further observed that in the said Civil Review Application the petitioners herein were the respondent nos. 2 to 7 and therefore they got the knowledge about the dismissal of Miscellaneous Civil Application No. 540 of 2003 long back and despite the same steps were not taken for restoration.

13. After going through the record in respect of civil revision application No. 116 of 2017, it is evident that while condoning the delay caused in filing the civil revision application or while disposing of the said civil revision application No. 116 of 2017 none appeared on behalf of the petitioners.

14. Nothing has been brought on record to show that after condonation of delay in filing civil application No. 116 of 2017 the notices were served by the petitioner in civil revision application No. 116 of 2017 wherein there was a mention of dismissal of Miscellaneous Civil Application No. 540 of 2003. In absence of such evidence it is not safe to hold that, the petitioners had knowledged about dismissal of Miscellaneous Civil Application No. 540 of 2003.

15. Moreover the fact that the learned counsel for the petitioners after dismissal of the Miscellaneous Civil Application No. 540 of 2003 applied for certified copies is not sufficient to arrive at a conclusion that

the counsel informed the fact of dismissal of Miscellaneous Civil Application to the petitioners.

16. In the above referred backdrop, the case of the petitioner that they received the knowledge about the dismissal of Miscellaneous Civil Application No. 540 of 2003 on 30th April, 2016, after receiving the copy of application for allowing the respondent nos. 3A to 3C herein as intervenor, cannot be rejected. In the said application for intervention since there was a mention about the dismissal of above referred Miscellaneous Civil Application, it can safely be said that the petitioner got the knowledge of dismissal of the said Miscellaneous Civil Application first time in the month of July, 2021 and thereafter immediately on obtaining necessary documents, the application for condonation of delay was filed along with application for restoration of Miscellaneous Civil Application.

17. The Hon'ble Supreme Court of India in the case of Esha Bhattarcharjee Vs. Managing Committee of Raghunathpur Nafar Academy and others¹ has held thus:

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

21.1. 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. 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.

1 2013(12) SCC 649

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

21.4. 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. Lack of bona fides imputable to a party seeking condonation of delay is a significant and relevant fact.

21.6. 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. The concept of liberal approach has to encapsule the conception of reasonableness and it cannot be allowed a totally unfettered free play.

21.8. 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. 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. 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. 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. 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. 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: -

22.1. 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.

22.2. 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.

22.3. 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.

22.4. 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.

(emphasis supplied)

12. In the teeth of above referred well settled principle of law and the discussion made herein above, I am of the opinion that the learned District Judge committed error in rejecting the application for condonation of delay. Accordingly, I pass the following order.

- i. Writ petition is allowed;
- ii. The Order Below Exhibit 1 dated 4th November, 2022 passed by the District Judge-1, Nagpur in Miscellaneous Civil Application No. 533 of 2021 is hereby quashed and set aside and consequently, the application for condonation of delay is allowed.

[ANIL S. KILOR, J.]