



IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD

928 CIVIL APPLICATION NO. 7402 OF 2018

IN

ARBAST/12273/2018

MAHARASHTRA KRISHNA VALLEY DEVELOPMENT CORPORATION

VERSUS

JAMIR CHANNUBHAI SHAIKH

...

Advocate for Applicant : Mr. Rajale Gulab B.

Advocate for Respondent : Mr. Mr. G. K. Naik-Thigle

...

CORAM : ARUN R. PEDNEKER, J.

DATE : 12<sup>th</sup> MARCH, 2024

PER COURT:

1. Heard.

2. The present application is filed for condoning the delay of 432 days in filing the arbitration appeal under section 37 of the Arbitration and Conciliation Act, 1996, against the order dated 07.10.2016, passed by the District Judge, Ahmednagar, under section 34 of the Act. The appeal is filed along with application for condonation of delay. The grounds for condonation of delay are raised at paras 3 to 6, are as under:-

*“3. The applicant submits that the proceedings before the lower court were filed and represented by the State on behalf of Executive Engineer, K.I.P. Division No.7 Shrigonda as the issues and work in dispute related prior to the passing*

*of M.K.V.D.C. Act, 1996. It is further submitted that in the proceedings i.e. Arbitration proceeding before the Sole Arbitrator and the Award passed by the Sole Arbitrator dated 21.10.1997 the Department was represented through by the State. It is submitted that in the meanwhile when the proceedings before the lower court were pending the Division i.e. The Executive Engineer K.I.P. Division No.7 Shrigonda was closed and the charge of the said Division later on came to be handed over to another Division i.e. The Executive Engineer, Kukadi Construction and Distribution Division Kolwadi.*

*4. The applicant submits that the impugned common judgment and order passed in Arbitration Application No.17/2009 was passed by District Judge Ahmednagar on 07.10.2016. The applicant submits that application for certified copies was given on 13.10.2016 by the Advocate of Department represented by through the State. It is submitted that the certified copies were ready on 19.11.2016 and the same were handed over to the Advocate on 24.11.2016.*

*5. The applicant further submits that even though last date of filing the appeal was 06.02.2017 as the State did not prefer appeal, the authorities of the concerned Division immediately contacted the Panel Advocate of the Corporation and he instructed the authorities to supply necessary documents such as copy of award, arbitration proceedings, written statement of the Corporation, decree forms, alongwith the certified copies of Judgment and order*

*and also court fees and expenses which were required for filing of the present appeal.*

*6. The applicant submits on the receipt of the said documents which were demanded the Advocate on Panel also informed the authorities in respect of necessary court fees and stamps and expenses in filing the appeal before this Honourable High Court. The applicant submits that the Panel Advocate also informed the concerned Division, authorities to take immediate steps to arrange for the required court fees, stamps and expenses, so that the appeal could be filed. The applicant submits that time was taken for securing funds in respect of court fees and expenses in filing the Arbitration Appeal with the applicant-Corporation. It is further submitted thereafter some important documents in respect of said appeal i.e. Award, certified copies of arbitration application were lost and misplaced from the office of the Advocate for the applicant thereby a further some more delay was caused in securing the same and filing this appeal. It is therefore submitted that due to the above mentioned facts and circumstances a delay of 426 days has occurred in filing the Appeal. It is therefore submitted that delay which has occurred is neither deliberate or intentional.”*

3. The law on the subject can be seen from the case of **Government of Maharashtra (Water Resources Department) represented by Executive Engineer Vs. Borse Brothers Engineers and Contractors**

**Private Limited, (2021) 6 SCC 460**, the Hon'ble Supreme Court, at paras

58 and 65 has observed as under:-

*“58. Given the object sought to be achieved under both the Arbitration Act and the Commercial Courts Act, that is, the speedy resolution of disputes, the expression “sufficient cause” is not elastic enough to cover long delays beyond the period provided by the appeal provision itself. Besides, the expression “sufficient cause” is not itself a loose panacea for the ill of pressing negligent and stale claims. This Court, in Basawaraj v. LAO, has held: (SCC pp.85-88, paras 9-15)*

*“9. Sufficient cause is the cause for which the 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 viewpoint of a reasonable standard of a cautious man. In this context, “sufficient cause” means that the party should not have acted in a negligent manner or there was a want of bona fide on its part in view of the facts and circumstances of a case or it cannot be alleged that the party has “not acted diligently” or “remained inactive”. 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. (See Manindra Land and Building Corpn. Ltd. v. Bhutnath Banerjee [AIR 1964 SC 1336] , Mata Din v. A. Narayanan [(1969) 2 SCC 770 : AIR 1970 SC 1953] ,*

*Parimal v. Veena [(2011) 3 SCC 545 : (2011) 2 SCC (Civ) 1 : AIR 2011 SC 1150] and Maniben Devraj Shah v. Municipal Corpn. Of Brihan Mumbai [(2012) 5 SCC 157 : (2012) 3 SCC (Civ) 24 : AIR 2012 SC 1629] .)*

10. In *Arjun Singh v. Mohindra Kumar [AIR 1964 SC 993]* this Court explained the difference between a “good cause” and a “sufficient cause” and observed that every “sufficient cause” is a good cause and vice versa. However, if any difference exists it can only be that the requirement of good cause is complied with on a lesser degree of proof than that of “sufficient cause”.

11. The expression “sufficient cause” should be given a liberal interpretation to ensure that substantial justice is done, but only so long as negligence, inaction or lack of bona fides cannot be imputed to the party concerned, whether or not sufficient cause has been furnished, can be decided on the facts of a particular case and no straitjacket formula is possible. (*Vide Madanlal v. Shyamlal [(2002) 1 SCC 535 : AIR 2002 SC 100]* and *Ram Nath Sao v. Gobardhan Sao [(2002) 3 SCC 195 : AIR 2002 SC 1201]* .)

12. It is a settled legal proposition that law of limitation may harshly affect a particular party but it has to be applied with all its rigour when the statute so prescribes. The court has no power to extend the period of limitation on equitable grounds. “A result flowing from a statutory provision is never an evil. A court has no power to ignore that provision to relieve what it considers a distress resulting from its operation.” The statutory provision may cause hardship or inconvenience to a particular party but the court has no choice but to enforce it giving full effect to the same. The legal maxim *dura lex sed lex* which means “the law is hard but it is the law”, stands attracted in such a situation. It has consistently been held that, “inconvenience is not” a decisive factor to be considered while interpreting a statute.

13. The statute of limitation is founded on public policy, its aim being to secure peace in the community, to suppress fraud and perjury, to quicken diligence and to prevent oppression. It seeks to bury all acts of the past which have

*not been agitated unexplainably and have from lapse of time become stale. According to Halsbury's Laws of England, Vol. 28, p. 266:*

*“605. Policy of the Limitation Acts.—The courts have expressed at least three differing reasons supporting the existence of statutes of limitations namely, (1) that long dormant claims have more of cruelty than justice in them, (2) that a defendant might have lost the evidence to disprove a stale claim, and (3) that persons with good causes of actions should pursue them with reasonable diligence.”*

*An unlimited limitation would lead to a sense of insecurity and uncertainty, and therefore, limitation prevents disturbance or deprivation of what may have been acquired in equity and justice by long enjoyment or what may have been lost by a party's own inaction, negligence or laches. (See Popat and Kotecha Property v. SBI Staff Assn. [(2005) 7 SCC 510] , Rajender Singh v. Santa Singh [(1973) 2 SCC 705 : AIR 1973 SC 2537] and Pundlik Jalam Patil v. Jalgaon Medium Project [(2008) 17 SCC 448 : (2009) 5 SCC (Civ) 907] .)*

*14. In P Ramachandra Rao v. State of Karnataka [(2002) 4 SCC 578 : 2002 SCC (Cri) 830 : AIR 2002 SC 1856] this Court held that judicially engrafting principles of limitation amounts to legislating and would fly in the face of law laid down by the Constitution Bench in Abdul Rehman Antulay v. R.S. Nayak [(1992) 1 SCC 225 : 1992 SCC (Cri) 93 : AIR 1992 SC 1701] .*

*15. The law on the issue can be summarised to the effect that where a case has been presented in the court beyond limitation, the applicant has to explain the court as to what was the “sufficient cause” which means an adequate and enough reason which prevented him to approach the court within limitation. In case a party is found to be negligent, or for want of bona fide on his part in the facts and circumstances of the case, or found to have not acted diligently or remained inactive, there cannot be a justified ground to condone the delay. No court could be justified in condoning such an inordinate delay by imposing any*

*condition whatsoever. The application is to be decided only within the parameters laid down by this Court in regard to the condonation of delay. In case there was no sufficient cause to prevent a litigant to approach the court on time condoning the delay without any justification, putting any condition whatsoever, amounts to passing an order in violation of the statutory provisions and it tantamounts to showing utter disregard to the legislature.”*

*(emphasis supplied)*

**63.** *Given the aforesaid and the object of speedy disposal sought to be achieved both under the Arbitration Act and the Commercial Courts Act, for appeals filed under Section 37 of the Arbitration Act that are governed by Articles 116 and 117 of the Limitation Act or Section 13(1-A) of the Commercial Courts Act, a delay beyond 90 days, 30 days or 60 days, respectively, is to be condoned by way of exception and not by way of rule. In a fit case in which a party has otherwise acted bona fide and not in a negligent manner, a short delay beyond such period can, in the discretion of the court, be condoned, always bearing in mind that the other side of the picture is that the opposite party may have acquired both in equity and justice, what may now be lost by the first party's inaction, negligence or laches. ”*

4. In the judgment of **Borse Brothers** (*supra*), the Hon'ble Supreme Court has concluded that the delay has to be condoned in cases, where the party was prevented by “sufficient cause” from prosecuting his case. The expression “sufficient cause” is not elastic enough to cover long delays beyond the period provided by the appeal provision itself. The appeals filed under section 37 of the Arbitration Act are governed by Articles 116 and 117 of the Limitation Act. The delay of 90 days or 30 days is to be condoned by way of an exception and not by way of a rule.

In a fit case, in which the party has otherwise acted bonafide and not in a negligent manner a short delay beyond such period can in the discretion of the court be condoned.

5. In the instant case, the reasons which are mentioned in the application as quoted above are administrative in nature and cannot be accepted for condoning the large delay of 432 days. The authority concerned has to act in due diligence. The applicant has not given “sufficient cause”, why the appellant was prevented from prosecuting the appeal after 90 days of the impugned order. The reasons assigned are administrative in nature and the same possibly can be considered if the appeal is filed with a short delay. Large delay cannot be considered for mere administrative reasons. As such, the application for condonation of delay is dismissed.

6. Mr. G. K. Naik-Thigle, learned counsel for the respondent has submitted that he would not file an application for withdrawal of the amount for three weeks. Statement is accepted.

**[ARUN R. PEDNEKER, J.]**