



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

904 CRIMINAL WRIT PETITION NO. 1659 OF 2023

Kanuprasad @ Kanjulal Kashinath Jaiswal

..PETITIONER

-VERSUS-

1. Anjali @ Khusbu Kanuprasad Jaiswal
2. Sau. Madhuri Kanuprasad Jaiswal
3. Kalpesh Kanuprasad Jaiswal
4. Balika Kalpesh Jaiswal
5. Saurabh Kanuprasad Jaiswal

..RESPONDENTS

Advocate for petitioner : Ms. Sarin Karishma Sanjay

Advocate for the respondent no.2 : Mr.M.S. Shah

Respondent nos.1, 3 to 5 are served-**Absent**.

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CORAM : SANJAY A. DESHMUKH, J.
DATED : 9th MAY, 2024.

PER COURT :-

1. The learned advocate for the petitioner has filed the receipt of deposit of arrears of maintenance amount of Rs.1,00,000/- same is marked as "X-1". The learned advocate for the petitioner submitted true copy of the pay slip of respondent no.1, however, this Court is deciding as to whether to condone the delay or not. Therefore, it is not necessary, at this stage, to allow the production of the pay slip.

2. This Writ Petition is directed against the judgment and order dated 12.01.2022 passed by learned Additional Sessions

Judge, Dhule below Exhibit-1 in Criminal M.A. No.93 of 2019. By the said order, the application filed by this petitioner for condonation of delay under section 5 of the Limitation Act, 1963 was rejected.

3. Brief facts of the case are that the applicant is father of respondent no.1 and husband of respondent no.2. Respondents filed application for granting maintenance before the learned Judicial Magistrate, First Class, Court No.3, Dhule bearing Criminal M.A. No.1302 of 2016. It was decided by the judgment dated 26.02.2019. The petitioner appeared in the matter and engaged an advocate, however, could not pursue the matter. The application for maintenance was allowed and the petitioner was directed to pay the maintenance of Rs.5,000/- each from the date of application to the respondents. The said judgment was challenged along with the application for condonation of delay on the ground that the petitioner was suffering from illness of high blood pressure, diabetes etc., therefore, he could not pursue the matter. Another ground is that his advocate did not communicate him about the dates of hearing of the case. The delay of 240 days is caused for filing revision. The learned Additional Sessions Court held that there is no documentary evidence of the alleged illness. He had not adduced any evidence about not giving of intimation by his advocate during hearing of that proceedings. Thus the application was rejected. These are the

grounds raised in this writ petition.

4. The learned advocate for the petitioner submitted that the petitioner's daughter is educated and she is having a job. She is earning a handsome salary. This fact was suppressed, however, she fairly conceded that this fact is not disclosed in the application for condonation of delay. The learned advocate for the petitioner is relying upon the authority in the case of ***Dhiraj Singh (D) Through Lrs. Vs. Haryana State and Others*** reported in ***2014 DGLS (SC) 1019***, in which in para 16 held as under :-

“16. The principles regarding condonation of delay particularly in land acquisition matters, have been enunciated in *Collector (LA) v. Katiji*, 1987(2) SCC 107, where it is stated in para 3 as under :-

“3. The legislature has conferred the power to condone delay by enacting Section 5 of the Indian Limitation Act of 1963 in order to enable the courts to do substantial justice to parties by disposing of matters on “merits”. The expression “sufficient cause” employed by the legislature is adequately elastic to enable the courts to apply the law in a meaningful manner which sub-serves the ends of justice – that being the life-purpose for the existence of the institution of courts. It is common knowledge that this Court has been making a justifiably liberal approach in matters instituted in this Court. But the message does not appear to have percolated down to all the other courts in the hierarchy. And such a liberal

approach is adopted on principle as it is realized that :

“1. Ordinarily a litigant does not stand to benefit by lodging an appeal late.

2. Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this when delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties.

3. “Every days delay must be explained” does not mean that a pedantic approach should be made. Why not every hours delay, every seconds delay ? The doctrine must be applied in a rational common sense pragmatic manner.

4. When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay.

5. There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala fides. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk.

6. It must be grasped that judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so.”

5. The learned advocate for the petitioner is also relying upon

the authority in the case of ***K. Subbarayudu and others Vs. Special Deputy Collector (Land Acquisition)*** reported in ***(2017) 12 SCC 840***, in which it is held as under :-

“12. With the acquisition of lands, the lifeline of the agriculturist is lost. There may be omission on the part of the claimants to adopt extra vigilance; but same need not be used as a ground to depict them with negligence or want of bona fides. In case of acquisition of lands of agriculturists, the courts ought to adopt a pragmatic approach to award just and reasonable compensation and not be pedantic in their approach. In *Dhiraj Singh v. State of Haryana*, it was held as under : (SCC p. 131, para 15)

“15. Equities can be balanced by denying the appellants' interest for the period for which they did not approach the Court. The substantive rights of the appellants should not be allowed to be defeated on technical grounds by taking hypertechnical view of self-imposed limitations. In the matter of compensation for land acquisition, we are of the view that approach of the court has to be pragmatic and not pedantic.”

6. The learned advocate for the petitioner lastly relied upon the authority in the case of ***Shanmuga Sadachara Servai Vs. Thirugnanam Servai*** reported in ***LAWS (MAD)-1999-4-153*** in which it is held as under :-

“The following guidelines have been given by the Apex Court in the decision in *Collector, Land Acquisition Anantnag v. Katiji Collector, Land Acquisition Anantnag v. Katiji Collector, Land Acquisition Anantnag v. Katiji*, AIR

1987 S.C. 1353 by stressing importance to adopt liberal approach in entertaining the application for condoning the delay under Sec. 5 of the Limitation Act :

(1) Ordinarily a litigant does not stand to benefit by lodging an appeal late. (2) Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this when delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties. (3) Every day's delay must be explained does not mean that a pedantic approach should be made. Why not every hour's delay, every second's delay ? The doctrine must be applied in a rational common sense pragmatic manner. (4) When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay. (5) There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala fides. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk. (6) It must be grasped that judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so."

7. The learned advocate for the petitioner submitted that the petitioner was suffering from diabetics etc., however the documents of medical treatment were not produced. It was depending upon the advise of the advocate. His right to file revision cannot be defeated for mistake of his advocate. In view of the law laid

down in the above authorities, the learned advocate for the petitioner submitted to consider the case of this petitioner liberally by condoning the delay.

8. The learned advocate for respondent no.2 strongly opposed the petition and submitted that the reasons and finding of the learned trial Court are clear and convincing. The learned trial Court has rightly held that no any documentary evidence of illness of petitioner is produced on record. Affidavit of concerned advocate who did not inform to the petitioner about the hearing of the case is also not filed. In the absence of any such evidence for condonation of delay no any ground is made out. Therefore, the impugned order of the trial Court is legal and correct. He is relying upon the authority of ***Gotiram Laxman Pawar Vs. Pravin Babasaheb Borde and others.***

In para 9 it is held as under :-

“9. The Supreme Court in the case of (Lanka Venkateshwarlu (D) by L.Rs. Vs. State of A.P. and others) 4, reported in A.I.R. 2011 S.C. 1199 in para-26 held ;

26. We are at a loss to fathom any logic or rationale, which could have impelled the High Court to condone the delay after holding the same to be unjustifiable. The concepts such as liberal approach, justice oriented approach, substantial justice can not be employed to jettison the substantial law of limitation. Especially, in cases where the Court concludes that there is no justification for the delay. In our opinion, the approach adopted by the High

Court tends to show the absence of judicial balance and restraint, which a Judge is required to maintain whilst adjudicating any lis between the parties. We are rather pained to notice that in this case, not being satisfied with the use of mere intemperate language, the High Court resorted to blatant sarcasms. The use of unduly strong intemperate or extravagant language in a judgment has been repeatedly disapproved by this Court in a number of cases. Whilst considering applications for condonation of delay under section 5 of the Limitation Act, the Courts do not enjoy unlimited and unbridled discretionary powers. All discretionary powers, especially judicial powers, have to be exercised within reasonable bounds, known to the law. The discretion has to be exercised in a systematic manner informed by reason. Whims or fancies; prejudices or predilections can not and should not form the basis of exercising discretionary powers.”

9. The learned advocate for respondent no.2 is relying upon the authority of ***State of Uttar Pradesh and others Vs. Sabha Narain and others*** reported in ***2021 DGLS (SC) 1165*** in which in paras 2 and 3, it is held as under :-

“2. The aforesaid itself shows the casual manner in which the petitioner has approached this Court without any cogent or plausible ground for condonation of delay. In fact, other than the lethargy and incompetence of the petitioner, there is nothing which has been put on record. We have repeatedly discouraged State Governments and public authorities in adopting an approach that they can walk in to the Supreme Court as and when they please ignoring the

period of limitation prescribed by the Statutes, as if the Limitation statute does not apply to them. In this behalf, suffice to refer to our judgments in the State of Madhya Pradesh v. Bheru Lal, [SLP [C] Diary No. 9217 of 2020 decided on 15.10.2020] and The State of Odisha v. Sunanda Mahakuda [SLP [C] Diary No. 22605/2020 decided on 11.01.2021]. The leeway which was given to the Government/public authorities on account of innate inefficiencies was the result of certain orders of this Court which came at a time when technology had not advanced and thus, greater indulgence was shown. This position is no more prevalent and the current legal position has been elucidated by the judgment of this Court in Office of the Chief Post Master General v. Living Media India Ltd., (2012) 3 SCC 563. Despite this, there seems to be a little change in the approach of the Government and public authorities.

3. We have also categorized such kind of cases as “certificate cases” filed with the only object to obtain a quietus from the Supreme Court on the ground that nothing could be done because the highest Court has dismissed the appeal. The objective is to complete a mere formality and save the skin of the officers who may be in default in following the due process or may have done it deliberately. We have deprecated such practice and process and we do so again. We refuse to grant such certificates and if the Government/public authorities suffer losses, it is time when concerned officers responsible for the same, bear the consequences. The irony, emphasized by us repeatedly, is that no action is ever taken against the officers and if the Court pushes it, some mild warning is all that happens.”

10. The learned advocate for respondent no.2 is relying upon

the authority in the case of ***Majji Sannemma @ Sanyasirao Vs. Reddy Sridevi and others*** reported in ***2021 DGLS (SC) 976*** in which in para 7.2 held as under :-

“7.2. In the case of P.K. Ramachandran (supra), while refusing to condone the delay of 565 days, it is observed that in the absence of reasonable, satisfactory or even appropriate explanation for seeking condonation of delay, the same is not to be condoned lightly. It is further observed that the law of limitation may harshly affect a particular party but it has to be applied with all its rigour when the statute so prescribes and the courts have no power to extend the period of limitation on equitable grounds. It is further observed that while exercising discretion for condoning the delay, the court has to exercise discretion judiciously.”

11. The learned advocate for respondent no.2 submitted that in absence of sufficient reasons such application for condonation of delay cannot be allowed. He therefore prayed to dismiss the Writ Petition.

12. Perused the application for condonation of delay and the order passed by the trial Court. It is also admitted fact that daughter of this respondent is 28 years old and well educated. It is argued that she is having package of huge amount of some lakhs of rupee. Some documents of her earning were tried to be placed on record. But it was strongly objected. Considering irrelevance for the purpose of this

application, the said for production of document is rejected by this Court.

13. The grounds for condonation of delay are that the applicant was suffering from high blood pressure and diabetes and therefore, he used to go for treatment outside the village frequently for further treatment. According to him, delay is not deliberately caused. In support of his application, he has not filed any documentary evidence before the Court which passed impugned order.

14. The Hon'ble Supreme Court guided about the manner of dealing with such cases while condoning delay that this Court has to consider the fact that refusing to condone the delay can result in a meritorious matter being thrown out at the very threshold and cause of justice is defeated. This Court has to see there shall be substantial justice. At the same time, this Court has to consider whether the other side can be compensated by awarding costs. The section 5 of the Limitation Act cannot be construed strictly. It must be construed liberally by keeping in mind that justice is superior than the law and if the justice is defeated merely due to the provisions of law being applied strictly then very purpose of protection of right and to give justice to the parties will be defeated. The petitioner has not got any

opportunity to lead the evidence. Therefore, most stress can not be given on proving the reasons strictly for condonation of delay that would cause injustice than substantial justice. There shall not be injustice to other side also. While considering such cases, it must be borne in mind that term “sufficient reasons” shall be construed liberally. Thus, the fact situation of the case is decisive. Delay caused for filing of the revision was 240 days. It can be compensated in terms of money by awarding costs to balance justice to the petitioner as well as to the respondents. Considering all these aspects, it would be proper to condone the delay in order to give opportunity to the petitioner to defend his case by way of revision. For the reasons stated above, the case laws cited by the learned advocate for the respondents are not helpful to them.

15. In view of the above reasons, the impugned order passed by the Additional Sessions Judge, Dhule deserves to be set aside. The delay of 240 days deserves to be condoned by awarding costs of Rs.2,000/- to be paid to the respondents within one and half month from today. The Writ Petition therefore deserves to be allowed. Hence the following order :-

O R D E R

- I. The Writ Petition is allowed in terms of prayer clause “B” subject to depositing costs of Rs.2,000/- in the Court of

Additional Sessions Judge at Dhule within one and half month from today in Delay Condonation proceedings i.e. Criminal M.A. No.1302 of 2016.

16. The learned advocate for respondent no.2 prays for staying this order in order to approach the Hon'ble Supreme Court. However, considering the peculiar set of facts of this case, it would not be proper to stay the order of this Court. Hence the prayer is rejected.

(SANJAY A. DESHMUKH, J.)

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