

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO. 05 OF 2024
WITH
INTERIM APPLICATION NO. 87 OF 2024
IN
SECOND APPEAL NO. 05 OF 2024

Gloob Interior Designs Pvt Ltd }
Through Authorised Rep Pravin Dhena } ... Appellant

Versus

Ashoka Tiles Through Its Partner }
Ashok Kantilal Chouhan } ..Respondent

...

Mr. Dormaan Dalal a/w Ms. Rishika Rajadhyaksha for the Appellant.
Mr. Ronak Shah for Respondent.

...

CORAM : SANDEEP V. MARNE J.

DATED : 30 JANUARY, 2024.

JUDGMENT :-

1) The Appeal is filed challenging Order dated 18 December 2023 passed by District Judge-16, Pune dismissing Appellant's application seeking condonation in filing Regular Civil Appeal challenging the Judgment and Decree dated 11 April 2022 passed by 5th Joint Civil Judge, Senior Division,

Pune in Special Civil Suit No. 1322 of 2016. Plaintiff filed Special Civil Suit No.1322 of 2016 for recovery of sum of Rs.6,94,950/- along with interest. The suit was decreed by the Trial Court by Judgment and Order dated 11 April 2022. Plaintiff filed Appeal against the decree along with Civil Miscellaneous Application No.484 of 2023 for condonation of delay in filing the Appeal. By the Impugned Order dated 18 December 2023, the First Appellate Court has refused to condone the delay and has dismissed Civil Miscellaneous Application No.484 of 2023. Aggrieved by the decision of the first Appellate Court, the Appellant has filed the present Appeal.

2) After having heard the submissions canvassed by the learned counsel appearing for the parties, the Second Appeal is admitted on following substantial questions of law:

i) Whether the first Appellate Court could have dismissed the Application for condonation of delay on the grounds of indication of incorrect number of days of delay in the application and stating in wrong number of the suit in that application?

ii) Whether Application for condonation of delay can be rejected without examining correctness of reasons stated therein?

3) Mr. Dalal the learned counsel appearing for the Appellant has placed on record Compilation of Documents necessary for the purpose of deciding the present Appeal. Considering the narrow controversy involved in the Appeal, both the learned counsel have jointly requested that the Second Appeal be taken up for hearing immediately after formulation of substantial questions of law. Accordingly with the consent of the learned counsel appearing for rival parties, the Appeal is taken up for final hearing.

4) Plaintiffs/Respondent instituted Special Civil Suit No.1322 of 2016 against the Defendant/Appellant for recovery of sum of Rs.6,94,950/- towards amounts due from the Defendant in connection with the business transactions. The suit proceeded *ex-parte* against the Defendant. Defendant made a belated appearance in the suit on 6 August 2019 and filed Application under Section 8 of the Arbitration and Conciliation Act, 1996, which came to be rejected by Order dated 7 November 2019. The Written Statement was however not filed. The Trial Court proceeded to decree the suit by Judgment and Order dated 11 April 2022. It is Appellant's case that he intended to file Appeal against the Decree dated 11 April 2022 and lodged Civil Miscellaneous Application for condonation of delay on E-filing portal of the District Court on 9 December 2022. However, though 'Filing No. 13476 of 2022' was generated for the Civil Miscellaneous Application, the same was actually not registered. The Appellant thereafter applied for certified copy the Judgment and Decree dated 11 April 2022 on 20 January 2023 which was received on 12 April 2023. It is the case of the Appellant that the District Court Registry published a list of objections pertaining to the Civil Miscellaneous Application e-filed by Appellant and refused to register the same on 28 April 2023.

5) In this background the Appellant once again filed Civil Miscellaneous Application for condonation of delay along with the Civil Appeal. The Application was numbered as Civil Miscellaneous Application No. 484 of 2023. In the Application, Appellant stated that there was delay on 298 days in filing the Appeal. The Application was resisted by Respondent by filing reply. By Order dated 18 December 2023, the first Appellate Court has dismissed the Application for condonation of delay.

6) In the meantime, execution proceedings were initiated by the Plaintiff. It appears that in execution proceedings initiated by the Defendant, Order dated 2 May 2023 was passed issuing warrant of attachment against the Appellants. The Appellant has filed Writ Petition No.7613 of 2023 in this Court challenging the Order dated 2 May 2023. This Court passed Order dated 7 July 2023 directing the first Appellate Court to decide the Application for stay on condition of Appellant depositing 50% of the principal amount in the Appellate Court. It appears that Appellant delayed deposit of the said amount and filed Interim Application in Writ Petition No.7613 of 2023 seeking extension of time to deposit 50% of the decretal amount. This Court permitted the Appellant to deposit 50% of the decretal amount along with interest thereon at the rate of 18% per annum from 15 July 2023 till the date of deposit. Accordingly, the Appellant deposited amount of Rs. 3,67,866/- before the Appellate Court on 10 November 2023.

7) Perusal of the Impugned Order dated 18 December 2023 passed by the first Appellate Court would indicate that the application for condonation of delay is rejected on twin grounds of indication of figure of 298 days for seeking condonation of delay and mentioning of erroneous suit number in the Application. So far as the first ground is concerned the quantum of delay was indicated by Appellant in the Application as 298 days. The first Appellate Court has arrived at a conclusion that the delay is actually of 409 days. The first Appellate Court has therefore accused the Appellant of making wrong computation of period of delay in the Application. The first Appellate Court has therefore undertaken the exercise of computing the delay from the date of alleged uploading of the judgment indicated by the Appellant as 5 May 2022. By computing the delay from 5 May 2022, the first Appellate Court has arrived at a conclusion that the delay would be of 385 days. Here again, the Appellant is accused of stating erroneous number of

days in the Application while seeking condonation thereof.

8) It appears that in the para 1 of the Civil Miscellaneous Application No. 484 of 2023, the Appellant made following averments:

*"1. The Appellant is a company registered under the Companies Act, 1956. The Appellant was the original defendant in Spl. Civil Suit No.1332 of 2016 (hereinafter referred to as "**the said suit**") filed before the Civil Judge Senior Division, Pune."*

Thus the Appellant inadvertently mentioned the number of Special Civil Suit as '1332 of 2016' when in fact the correct number of the Suit is '1322 of 2016'. In my view, this was clearly a typographical error in mentioning the number of suit. Instead of ignoring the same as a typographical error, the first Appellate Court unnecessarily went into online case status of Special Civil Suit No. 1332 of 2016 and has observed that the said suit is in respect of different parties. Mentioning of wrong number of the suit is yet another reason considered by the first Appellate Court as fit ground for rejection the application for condonation of delay.

9) There is no doubt that the Appellant ought to have been slightly more vigilant in indicating correct number of days of delay while seeking condonation thereof, and also in mentioning the correct suit number in the Application. However, errors committed by Appellant out of inadvertence on both the fronts could not alone have been the reason for rejecting the application for condonation of delay. Perusal of the Order passed by the first Appellate Court would indicate that no attempt is made to examine the justification sought to be given in the application for condonation of delay. In my view the application for condonation of delay ought to have been decided by examining the reasons pleaded in the application. However, the District Court has completely misdirected itself in taking into consideration

extraneous factors, which, in the facts of the present case, ought to have been ignored.

10) The Apex Court in ***Manoharan Vs. Sivarajan and Others*** (2014) 4 SCC 163 has referred to its judgment in ***State of Bihar Vs. Kameshwar Prasad Singh***¹ and has held that power to condone the delay in approaching the Court has been conferred upon Courts to enable them to do substantial justice to the parties by deciding the case on merits. The Court has held in para 8 as under:

"8. In State of Bihar v. Kameshwar Prasad Singh, it was held that power to condone the delay in approaching the Court has been conferred upon the Courts to enable them to do substantial justice to the parties by disposing the cases on merit. The relevant paragraphs of the case read as under: (SCC pp. 102-104, paras 11-13)

"11. Power to condone the delay in approaching the Court has been conferred upon the Courts to enable them to do substantial justice to parties by disposing of matters on merits. This Court in Collector, (LA) v. Katiji held that the expression 'sufficient cause' employed by the legislature in the Limitation Act is adequately elastic to enable the Courts to apply the law in a meaningful manner which subserves the ends of justice - that being the life-purpose for the existence of the institution of Courts. It was further observed that a liberal approach is adopted on principle as it is realised that: (SCC p. 108, para 3)

- 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

¹ (2000) 9 SCC 94

to legalise injustice on technical grounds but because it is capable of removing injustice and is expected to do so.

12. After referring to the various judgments reported in New India Insurance Co. Ltd. v. Shanti Misra, Brij Inder Singh v. Kanshi Ram, Shakuntala Devi Jain v. Kuntal Kumari, Concord of India Insurance Co. Ltd. v. Nirmala Devi, Lala Mata Din v. A. Narayanan, State of Kerala v. E.K. Kuriyipe, Milavi Devi v. Dina Nath, O.P. Kathpalia v. Lakhmira Singh, Collector (LA) v. Katiji, Prabha v. Ram Parkash Kalra, G. Ramegowda v. Sp. Land Acquisition Officer, Scheduled Caste Co-op. Land Owning Society Ltd. v. Union of India, Binod Bihari Singh v. Union of India, Shakambari & Co. v. Union of India, Ram Kishan v. U.P. SRTC and Warlu v. Gangotribai this Court in State of Haryana v. Chandra Mani held: (SCC p. 138, para 11)

'11.....The expression 'sufficient cause' should, therefore, be considered with pragmatism in justice-oriented process approach rather than the technical detention of sufficient case for explaining every day's delay. The factors which are peculiar to and characteristic of the functioning of the governmental conditions would be cognizant to and requires adoption of pragmatic approach in justice oriented process. The Court should decide the matters on merits unless the case is hopelessly without merit. No separate standards to determine the cause laid by the State vis-a-vis private litigant could be laid to prove strict standards of sufficient cause. The Government at appropriate level should constitute legal cells to examine the cases whether any legal principles are involved for decision by the Courts or whether cases require adjustment and should authorize the officers to take a decision to give appropriate permission for settlement. In the event of decision to file the appeal needed prompt action should be pursued by the officer responsible to file the appeal and he should be made personally responsible for lapses, if any. Equally, the State cannot be put on the same footing as an individual. The individual would always be quick in taking the decision whether he would pursue the remedy by way of an appeal or application since he is a person legally injured while State is an impersonal machinery working through its officers or servants.' To the same effect is the judgment of this Court in Tehsildar (LA) v. K.V. Ayisumma,

13. In Nand Kishore v. State of Punjab this Court under the peculiar circumstances of the case condoned the delay in approaching this Court of about 31 years. In N. Balakrishnan v. M. Krishnamurthy this Court held that the purpose of Limitation Act was not to destroy the rights. It is founded on public policy fixing a life span for the legal remedy for the general welfare. The primary function of a Court is to adjudicate disputes between the parties and to advance substantial justice. The time limit fixed for approaching the Court in different situations is not because on the expiry of such time a bad cause would transform into a good cause. The object of providing legal remedy is to repair the damage caused by reason of legal injury. If the explanation given does not smack mala fides or is not shown to have been put forth as a part of a dilatory strategy, the Court must show utmost consideration to the suitor. In this context it was observed in N. Balakrishnan v. M. Krishnamurthy: (SCC p. 127, para 9)

'9. It is axiomatic that condonation of delay is a matter of discretion of the Court. Section 5 of the Limitation Act does not say that such discretion can be

exercised only if the delay is within a certain limit. Length of delay is no matter, acceptability of the explanation is the only criterion. Sometimes delay of the shortest range may be uncontainable due to a want of acceptable explanation whereas in certain other cases, delay of a very long range can be condoned as the explanation thereof is satisfactory. Once the Court accepts the explanation as sufficient, it is the result of positive exercise of discretion and normally the superior Court should not disturb such finding, much less in revisional jurisdiction, unless the exercise of discretion was on wholly untenable grounds or arbitrary or perverse. But it is a different matter when the first Court refuses to condone the delay. In such cases, the superior Court would be free to consider the cause shown for the delay afresh and it is open to such superior Court to come to its own finding even untrammelled by the conclusion of the lower Court.”

11) More recently, in ***Sheo Raj Singh v. Union of India***,² after taking stock of various decisions delivered by it, the Apex Court has held that condonation of delay, being discretionary powers available to Courts, exercise of discretion must necessarily depend upon the sufficiency of cause shown and the degree of acceptability of the explanation, the length of delay being immaterial. The Court held in Paras 35 and 36 as under:

"35. We find that the High Court in the present case assigned the following reasons in support of its order:

35.1. The law of limitation was founded on public policy, and that some lapse on the part of a litigant, by itself, would not be sufficient to deny condonation of delay as the same could cause miscarriage of justice.

35.2. The expression "sufficient cause" is elastic enough for courts to do substantial justice. Further, when substantial justice and technical considerations are pitted against one another, the former would prevail.

35.3. It is upon the courts to consider the sufficiency of cause shown for the delay, and the length of delay is not always decisive while exercising discretion in such matters if the delay is properly explained. Further, the merits of a claim were also to be considered when deciding such applications for condonation of delay.

35.4. Further, a distinction should be drawn between inordinate unexplained delay and explained delay, where in the present case, the first respondent had sufficiently explained the delay on account of negligence on part of the government functionaries and the government counsel on record before the Reference Court.

35.5. The officer responsible for the negligence would be liable to suffer and not public interest through the State. The High Court felt inclined to take a pragmatic view since the negligence therein did not border on callousness.

36. Given these reasons, we do not consider discretion to have been exercised by the High Court in an arbitrary manner. The order under challenge had to be a clearly wrong order so as to be liable for interference, which it is not."

12) In my view therefore the first Appellate Court has committed an error in unnecessarily harping on the inadvertence committed by Appellant in indicating incorrect figure of delay as well as incorrect number of Suit, rather than examining the explanation pleaded the Application.

13) In the Application, the Applicant pleaded that though the suit was decreed on 11 April 2022, the Judgment was uploaded on 5 May 2022 and it acquired knowledge about the same in October 2022. The Appellant pleaded that its Advocate did not provide updates about progress of the suit on account of which it was oblivious about decision of the suit on 11 April 2022. The Appellant further pleaded that the certified copy of the decree was received on 20 April 2023 and 12 April 2023.

14) It has also come on record that the Appellant attempted to lodge the Appeal on earlier occasion in December 2022 and has produced on record print-out of case details from the website of District and Sessions Court, Pune, which indicates that Civil Miscellaneous Application bearing filing No. 13476 of 2022 was e-filed on 9 December 2022. It appears that objections were raised in the e-filing portal and published on the office notice board on 21 March 2023 and on account of non-removal of objections, the registration was refused on 28 April 2023. The Appellant thereafter lodged the Civil Miscellaneous Application once again on 26 June 2023. Therefore, it cannot be stated that the Appellant was not vigilant about setting up challenge to the decree. He did make an attempt to

lodge the Appeal along with Civil Miscellaneous Application on 9 December 2022 on e-filing portal. In that view of the matter, delay occurred in filing Appeal deserves to be condoned. Both the questions of law formulated above are answered accordingly.

15) The Appeal accordingly succeeds. Order dated on 18 December 2023 passed by the first Appellate Court is set aside and Civil Miscellaneous Application No. 484 of 2023 is allowed by condoning the delay in filing the Appeal. The Appeal filed by the Appellant shall be numbered and decided on merits. With above directions, the Appeal is allowed. Parties to bear their respective costs.

16) In view of the fact that the Second Appeal is allowed, Interim Application No.87 of 2024 does not survive and the same is also disposed of.

[SANDEEP V. MARNE J.]