

Wadhwa

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 2676 OF 2023**

Chimnubhai Soniyabhai Mahla ...Petitioner
Versus
Zippar Soniyabhai Mahla & Ors ...Respondents

Mr Bhavesh Parmar, *with Devmani Shukla, Reshma Nair, Rajesh Sahani, i/b Devmani Shukla, for the Petitioner.*
Mr Harish R Pawar, *with Shivam S Gawde & Pawan Tiwari, for Respondents Nos. 1, 2, 6, 7, 8, 11, 13 (13-A, 13-B-1 to 13-B-4) and 14 to 16.*

CORAM Kamal Khata, J.
DATED: 10th April 2024

PC:-

1. **Rule.** Rule returnable forthwith. By consent of parties taken up for final hearing.

2. By this Petition, under Article 226 and 227 of the Constitution of India, the Petitioner impugns the order dated 7th January 2022 whereby Civil Misc. Application No. 5 of 2019 in Appeal No. __ of 2019 seeking condonation of delay of the stated period of 54 days in filing the Appeal was rejected.

3. Mr Parmar for the Petitioner admits that the delay was of 101 days and not of 54 days. However, he submits that the Court ought to have considered that substantive rights of the litigant are compromised if the Appeal was not admitted. The learned Judge, he submits ought to have considered that the Petitioner and the Respondents represented by Mr Pawar were tribals. He submits that he had diligently followed up with his Advocate but however, in view of the difficulties that were faced and that are not particularly mentioned in the Petition herein there was a delay caused.

4. He refers to the judgment of the Apex Court in the case of *Raheem Shah and Anr. Vs Govind Singh & Ors.*¹ which in turn refers to the judgment in the case of *Collector, Land Acquisition, Anantnag & Anr. vs Katiji & Ors.*² to submit that the courts should not take a hyper technical approach where a meritorious matter would be thrown out resulting in injustice. The relevant paragraph is extract below for ready reference:

“4. This court in the case of Collector, Land Acquisition, Anantnag & Anr. Vs. Mst. Katiji & Ors. Reported in (1987) 2 SCC 107 had held as hereunder:

“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**

1 Civil Appeal No. 4628 of 2023 (arising out of SLP (C) No. 27901/2015)
 2 (1987) 2 SCC 107

‘sufficient cause’ employed by the legislature 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 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 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. I 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.

Making a justice-oriented approach from this perspective, there was sufficient cause for condoning the delay in the institution of the appeal.”

(Emphasis supplied)

5. *Per Contra* Mr Pawar’s contention is that as required in law, the Petitioner had not explained the day to day delay. He, therefore, submitted that the Petition should be dismissed.

6. Having heard both counsels, I am of the opinion that the pedantic approach should not be taken in the interest of justice where admittedly a relevant property of the Petitioner is not considered and is excluded in the judgment of the trial Court which

is partly decreed in favour of the Petitioner. The same deserves to be decided. If the Appeal is not restored by condoning the delay, the Petitioner will suffer grave prejudice. It is an admitted position that both the Petitioner and the Respondents Nos. 1, 2, 6, 7, 8, 11, 13 (13-A, 13-B-1 to 13-B-4) and 14 to 16 are tribals. The Court is obliged to see that justice is done and substantial rights of the Petitioners are not obliterated on account of delay. The Judgement of the Supreme Court relied upon by Petitioner squarely applies to this case. Thus, the Petition deserves to be allowed.

7. The impugned order of 7th January 2022 is set aside. The delay of 101 days is thus condoned and the matter shall be taken up by the Appellate Court on file and should be disposed of at the earliest convenience.

8. No orders at costs.

9. All concerned to act on the authenticated copy of this order.

(Kamal Khata, J)