

Shabnoor

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.8094 OF 2024

Maruti Krishnaji Shinde & Ors.

... Petitioners

V/s.

Maruti Anna Ghatge

... Respondent

Mr. Chetan G. Patil i/by Mr. Mandar G. Bagkar for
petitioner.

Mr. Vinod P. Sangvikar for respondent.

CORAM : AMIT BORKAR, J.

DATED : AUGUST 27, 2024

P.C.:

- 1. Rule.** Rule is made returnable forthwith.
- 2.** The petitioners are challenging an order passed by the Appellate Court, District Judge-2, Islampur, dated 22 February 2024, in Civil Miscellaneous Application No. 40 of 2022, whereby the delay of 1,220 days in filing an appeal under Section 96 of the Code of Civil Procedure, 1908, was condoned.
- 3.** The petitioners had filed Regular Civil Suit No. 157 of 2012, seeking relief in the form of a declaration, injunction, and possession. The respondent, who is defendant No. 1, filed a counterclaim seeking relief for partition. The Trial Court, by its judgment and decree dated 14 November 2018, partly decreed the suit, holding that the sale deed dated 7 December 2012, executed by defendant No. 1 in favor of defendant No. 2, is not binding on

the plaintiff and restrained the defendants from disturbing the plaintiff's possession over the suit property.

4. Aggrieved by the judgment and decree of the Trial Court, defendant No. 1 (respondent herein) filed an appeal along with Miscellaneous Civil Application No. 40 of 2022, seeking condonation of the delay of 1,220 days in filing the appeal. The reasons cited for the delay were: (i) the respondent is a permanent resident of Mumbai; (ii) the respondent was undergoing medical treatment during the relevant period; and (iii) the onset of COVID-19 prevented the respondent from filing the appeal.

5. The petitioner opposed the application by filing a reply. In the reply, the petitioner pointed out that the respondent is a permanent resident of Bilashi, Taluka- Shirala, District-Sangli; that no evidence was produced by the respondent to substantiate the claim of medical treatment during the relevant period; and that the judgment and decree were dated 14 November 2018, whereas the COVID-19 situation only arose after 24 March 2020, i.e., 16 months after the date of the impugned judgment and decree.

6. The Appellate Court, by the impugned order, condoned the delay of 1,220 days, finding that the record indicated that respondent, the original defendant No. 1, was residing in Mumbai and undergoing medical treatment. It was further held that he applied for a certified copy of the judgment, but due to the COVID-19 pandemic, he could not obtain the certified copy and, therefore, could not file the appeal within the prescribed period. Consequently, the Appellate Court condoned the delay, subject to

the payment of costs of Rs. 5,000/-. This order is the subject matter of the present petition.

7. I have heard the learned Advocates for the respective parties.

8. While it is well-established that the Court should adopt a liberal approach when condoning delays, the reasons stated in the application must be substantiated by credible material on record. The Apex Court in *Esha Bhattacharjee v. Managing Committee of Raghunathpur Nafar Academy & Ors.*, (2013) 12 SCC 649, in paragraph 21, laid down broad principles that the Court must adopt while considering an application for condonation of delay. These principles include a liberal, pragmatic, and justice-oriented approach, proper understanding of the term "sufficient cause," avoidance of undue technicalities, and careful scrutiny of the facts, among others which are extracted hereunder:

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

21.1. (i) 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. (ii) 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.

21.3. (iii) Substantial justice being paramount and

pivotal the technical considerations should not be given undue and uncalled for emphasis.

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

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

21.8. (viii) 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. (ix) 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. (x) 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. (xi) 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 (xii) 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 (xiii) The State or a public body or an entity representing a collective cause should be given some acceptable latitude.”

9. Upon scrutinizing the application for condonation of delay and the material produced by the parties before the Appellate Court, the following factual scenario emerges: (i) The respondent, defendant No. 1, is a resident of Village Bilashi, Taluka-Shirala, District-Sangli, and his primary occupation is agriculture. This fact was admitted by defendant No. 1 during cross-examination. (ii) The respondent failed to produce any evidence to substantiate his claim of undergoing medical treatment during the relevant period. (iii) The judgment and decree were dated 14 November 2018. During cross-examination, respondent No. 1 admitted that he was aware of the judgment and decree immediately and that he applied for and received a certified copy soon after the judgment. (iv) The COVID-19 situation arose only after 24 March 2020, i.e., 16 months after the date of the impugned judgment and decree.

10. All the aforementioned factors indicate that the reasons provided by respondent No. 1 in the application for condonation of delay have not been substantiated. Consequently, none of the reasons cited in the application can be considered as "sufficient cause" within the meaning of Section 5 of the Limitation Act, 1963.

11. Furthermore, the lower Appellate Court's findings that respondent No. 1 was residing in Mumbai and undergoing medical treatment there are factually incorrect. As noted earlier, in the absence of documents substantiating medical treatment following the passing of the decree, the Appellate Court was not justified in making such a finding. Additionally, the finding regarding the receipt of the certified copy and the inability to obtain it due to the COVID-19 period is also unsupported by the record. Therefore, the findings recorded by the Appellate Court in favor of respondent No. 1 were based on no evidence. These findings are thus perverse, warranting interference with the order condoning the delay. Consequently, the impugned order cannot be sustained.

12. Rule is made absolute in terms of prayer clause (a).

13. The writ petition stands disposed of in above terms. No order as to costs.

14. Pending interim application(s), if any, stands disposed of.

(AMIT BORKAR, J.)