

Amberkar

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

INTERIM APPLICATION NO. 1668 OF 2024
IN
CRIMINAL REVISION APPLICATION (ST) NO. 4571 OF 2024

Dr. Moosa Babalal Magdum

.. Applicant

Versus

Securities and Exchange Board of India & Anr.

.. Respondents

.....

- Mr. Jamshed Ansari for Applicant
- Ms. Sabina Ansari a/w Ms. Tanvi Rane for Respondent No. 1
- Ms. Sangeeta E. Phad, APP for State

.....

CORAM : MILIND N. JADHAV, J.

DATE : NOVEMBER 18, 2024

P. C.:

1. Heard Mr. Ansari, learned Advocate for Applicant; Ms. Ansari, learned Advocate for Respondent No. 1 and Ms. Phad, learned APP for State.

2. Present Interim Application filed by Revision Applicant seeks condonation of delay of 605 days in filing the Revision Application.

3. It is stated in the Interim Application by Applicant that pursuant to the impugned order rejecting the Discharge Application filed by Applicant which is dated 10.03.2022, learned Advocate for Applicant collected certified copy of the same on 24.03.2022 and dispatched the said certified copy of order by speed-post at the Thane address of Applicant's son. Mr. Ansari would submit that the said packet was

returned back by the postal authorities with the remark "unclaimed". The son of Applicant was out of State at that time. Photocopy of the said returned packet is appended at Exh. B. Mr. Ansari would next submit that Applicant is 86 years old and settled in Kolhapur post retirement and did not have any occasion to visit Mumbai/ Thane or give instructions to his Advocate for filing the Revision Application. He would submit that one of the reason for precluding the Applicant to come to Mumbai is due to his immobility in view of his advanced age being the reason for delay. He would submit that in view of the impugned order, criminal case filed on 21.03.2001 was activated resultantly leading to issuance of process in the said case against the Applicant. In fact in that case warrant was issued against the Applicant which came to his knowledge only on 15.01.2024. At this juncture Applicant immediately contacted his Advocate who took immediate steps and the warrant was cancelled by order dated 23.01.2024. Order dated 23.01.2024 is appended at Exh. C. Mr. Ansari would submit that it is only at this stage that Applicant got hold of the certified copy of order dated 10.03.2022 passed below Exh. 20 and gave instructions to challenge the said order by which time there was a delay of 605 days. On the above grounds, condonation of delay is sought for filing the Revision Application.

4. *Per contra* Ms. Ansari, learned Advocate for Respondent No. 1 SEBI has drawn my attention to the affidavit in reply dated 04.05.2024 filed by SEBI online. I have perused the said affidavit. On going through the said affidavit what I find is that the said affidavit deals with the merits of the matter in so far as dereliction of Applicant for violation of the provisions of SEBI Act 1992 in the principal matter are concerned. Though certain questions are raised in the affidavit filed by Respondent No. 1 to oppose condonation of delay with respect to knowledge of the Applicant about the impugned order rejecting his Discharge Application, I do not propose to deal with the same as I am convinced for the reasons stated in the Application that the delay deserves to be condoned. In view of the principles enumerated by the Supreme Court in the case of **Esha Bhattacharjee Vs. Managing Committee of Rahunathpur Nafar Academy & Ors¹** and more specifically the further guidelines stated by the Supreme Court in paragraph No. 20 of the said judgment, present Interim Application seeking condonation of delay of 605 days deserved to be allowed on the grounds stated and explained for the delay.

5. Needless to state that the above order of condonation of delay is not unconditional. Applicant is directed to pay costs of Rs. 5,000/- to **A.K. Munshi Yojana's J.T. Sheth Mandbuddhi Vikas Kendra**, a

¹ (2013) 12 SCC 649

Special School imparting education and training to the needs of 150 special children in the field of Education (Classes for 6 to 18 years), early intervention(upto 6 years) and vocational training (18 years above) having its school address and building at A.K. Munshi Yojana Chowk, 3rd Panjarapole Lane, C.P. Tank, Mumbai – 400 004 [Contact Nos. 22425513 / 22423654] registered under the Society Registration Act, XXI of 1980 under No. : 387/81 GBBSD and the Public Trust Act, XXIX of 1950 under No. F-6809. RCI Reg. No. 0163 within a period of two weeks from today. Subject to payment of costs on production of receipt on record, present Interim Application stands allowed and delay stands condoned.

6. Subject to the above compliance, Registry is directed to register the Revision Application filed by Applicant subject to removal of office objections by Applicant within a period of one week from the date of compliance.

7. Ms. Phad, learned APP appears for Respondent No. 2 - State. Both the learned Advocates waive service subject to Applicant serving copy of Revision Application on them. Advocate for Applicant shall serve copy of Application on Respondent No. 2.

8. Interim Application No. 1668 of 2024 stands allowed and disposed.

9. Place the Revision Application on board on 17th December, 2024.

Amberkar

[MILIND N. JADHAV, J.]

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signed by
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