



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CIVIL APPLICATION (CAO) NO.713 OF 2021 IN
MCA ST. NO.4279 OF 2020 IN
SECOND APPEAL NO.564 OF 2006

Uttam S/o Shankar Shikare .Vs. Smt. Gitabai Wd/o Shankar Shikare and another

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Shri R.S. Bhoyar, Adv. h/f Shri P.S. Chawhan, Adv. for appellant/applicant.
Shri S.D. Dharaskar, Adv h/f Shri K.S. Narwade, Adv. for respondent No.2.
Shri V.A. Lohia, Advocate for Intervenor.

CORAM : SANJAY A. DESHMUKH, J.

DATE OF RESERVING THE ORDER : 03/09/2024

DATE OF PRONOUNCING THE ORDER : 19/09/2024

1. This is an application for condonation of delay of 590 days caused for filing of application for restoration of Second Appeal No.564 of 2006 which was dismissed in default.

2. Perused the application and say filed by the respondent.

3. Heard learned advocates for both sides.

4. The learned advocate for the appellant pointed out that, the appeal is dismissed by order dated 14.06.2018. That time, his advocate submitted pursis that, appellant has

taken away the case papers of this appeal from him. The appeal was dismissed. The notice was not issued by this Court to the appellant to remain present in the Court for hearing of second appeal. Therefore, the order of dismissal of appeal is not legal and correct.

5. The learned advocate for the appellant submitted that the delay is not deliberately caused. The applicant is rustic villager and not knowing the procedural law and its legal consequences. Therefore, he could not remain present for hearing of appeal. The valuable civil rights are to be decided on merit. He lastly prayed to allow the application in the interest of justice.

6. The learned advocate for the appellant relied upon the following authorities :

(i) ***N. Balkrishnan Vs. M. Krishnamurthy, reported in (1998) 7 SCC 123***, wherein the Hon'ble Apex Court held in paragraph No.11 read thus :

“Rule of limitation are not meant to destroy the right of parties. They are meant to see that parties do not resort to dilatory tactics, but seek their remedy promptly. the object of providing a legal remedy is to repair the damage caused by reason of legal injury. Law of limitation fixes a life-span for such legal remedy for the redress of the legal injury so suffered. Time is precious and the wasted time would never revisit. During efflux of time newer causes would sprout up necessitating newer persons to seek legal remedy by approaching the courts. So a life span must be fixed for each remedy. Unending period for launching the remedy may lead to unending uncertainty and consequential

anarchy. Law of limitation is thus founded on public policy. It is enshrined in the maxim Interest reipublicae up sit finis litium (it is for the general welfare that a period be put to litigation). Rules of limitation are not meant to destroy the right of the parties. They are meant to see that parties do not resort to dilatory tactics but seek their remedy promptly. The idea is that every legal remedy must be kept alive for a legislatively fixed period of time.”

(ii) ***Divisional Sports Officer and another Vs. Umashankar Sahu***, reported in 2020 SCC OnLine Chh 623, referred to the guidelines given the matter of ***Esha Bhattacharjee Vs. Managing Committee of Reghunathpur Nafar Academy, JT (2013) 2 SC 450***, which are reproduced below:

“8.

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

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.

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.

iii) Substantial justice being paramount and pivotal the technical considerations should not be given undue and uncalled for emphasis.

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.

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

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.

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

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.*

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.*

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.*

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.*

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.*

xiii) *The State or a public body or an entity representing a collective cause should be given some acceptable latitude.”*

(iiii) ***Majji Sannemma @ Sanyasirao Vs. Reddy Srivedi & Ors., in Civil Appeal No.7696/2021***, in the Supreme Court of India Civil Appellate Jurisdiction, held in paragraph No.7.2 read thus :

“7.2. In the case of P.K. Ramachandran Vs.State of Kerala and Anr., (1997) 7 SCC 556, 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.”

7. Respondents by filing reply strongly opposed the application and submitted that, applicant has not stated sufficient cause for condoning the delay. The learned advocate for respondent pointed out some documents along with list produced on record i.e. copy of registered sale deed dated 04.01.2020, copy of order passed by the Additional Collector dated 20.12.2019, copy of memo of revision dated 27.01.2020, copy of order of Additional Commissioner dated 30.01.2020, copy of order passed by this Court dated 26.06.2021, copy of order of Additional Commissioner dated 29.10.2021 and copy of death certificate of respondent No.1 dated 21.08.2020.

8. The learned advocate for respondents further pointed out additional reply to the said application and pointed out some documents i.e. copy of another suit bearing No.193 of 2018 filed by applicant along with Rojnama with some other documents of revenue proceedings i.e. the proceedings filed by the appellant as per Section 257 of the Maharashtra Land Revenue Code, 1966 etc. The learned advocate for the respondents submitted that this conduct of the appellant shows that delay is deliberately caused. He, therefore, submitted that, delay has been deliberately caused. It cannot be condoned.

9. The learned advocate for the respondent is relying upon the following authorities :-

(i) ***Dr. Prakash S. Prabhu Dessai and another ..vs.. Administrator of Comunidades and another***, reported in **2024 SCC OnLine Bom 1014** in which it is held as under :

“46. ... If a party is found to be negligent, or for want of bonafide on his part in the facts and circumstances of the case, or found to have not acted diligently or remained inactive there cannot be a justified ground to condone the delay. No court could be justified in condoning such an inordinate delay by imposing any condition whatsoever. ...”

(ii) ***Shri Ashok Mande ..vs.. Shri Jitendrakumar Tarachand Kothari*** passed by this Court in Writ Petition No.2178 of 2020 on 09.08.2023. para no.19 read as under:

“19. From the above referred reasons stated in the application, it can be seen that the blame is attributed on the advocate. Moreover, the application is vague and no details are given when the petitioner contacted the lawyer and the dates or the period when the advocate allegedly asked the petitioner to wait for the notice from the Court as the matter has been transferred.”

10. Nobody will dispute the ratio laid down in the above authorities. It is well settled that each case has to be decided on its own merits and facts of each case are always different and decisive.

11. It is crystal clear from the conduct of appellant that, the various proceedings which he filed before the

revenue authority and civil suit in the civil Court that there was some dispute about his property. He would have filed said application accordingly, within reasonable time. Generally, litigants are not aware about procedural law. They depends upon advise of the advocate. Therefore, it cannot be inferred that appellant deliberately caused delay for filing this application.

12. The civil litigation between the parties is going on since 2001 i.e. more than 23 years are over. No doubt, the applicant had taken away all papers of appeal from his advocate. But notice was not sent to him by this Court to remain present for hearing of the appeal. On the same day, order of dismissal of appeal was passed when appellant's advocate was discharged upon hearing him. The civil lis must be decided on merit.

13. The ratio and guidelines given by the Hon'ble Supreme Court of India in the cases of *Sheo Raj Singh (Deceased) through LRs. ..vs.. Union of India*, reported in 2023 SCC OnLine SC 1278 and *N. Balakrishnan ..vs.. M. Krishnamurthy*, reported in (1998) 7 SCC 123, cited Supra as discussed above are squarely applicable to the case of the appellant that substantial justice is paramount consideration for decision as to condonation of delay.

14. Considering all above aspect as well as fact that, the lis as to the valuable rights as to agricultural land between the parties must be decided on merit and that the delay is not deliberately caused, the application deserves to be allowed in the interest of justice. However, the appellant being member of schedule tribe and financially poor, cost cannot be imposed upon him in the interest of justice.

15. The application is **allowed**. Delay of 590 days caused for preferring the application for restoration of second appeal is condoned.

16. The restoration application filed by appellant bearing Stamp No.4279 of 2020 be registered and fixed for filing of say of respondent on **24.09.2024** and hearing.

17. The application is **disposed of**.

(SANJAY A. DESHMUKH, J.)