



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CIVIL APPLICATION (CAC) NO.40 OF 2023 IN
CIVIL REVISION APPLICATION STAMP NO.8035 OF 2023

Manoj Ashok Ranvir Vs. Varsha Manoj Ranvir

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's Orders.

Court's or Judge's orders.

Shri Y.R. Kinkhede, Advocate for applicant.
Shri Tufel Sharif, Advocate h/f Shri Yash Kollarwar, Advocate
for non-applicant.

CORAM : M.W. CHANDWANI, J.
DATE : FEBRUARY 9, 2024.

By this application, the applicant is seeking condonation of delay of 80 days in filing revision application.

2. The contention raised in the application is that the applicant is serving in remote area of Gadchiroli district and posted in dense forest where there is no mobile network and therefore he could not contact his counsel to prefer the present revision application. Apart from it, the daughter of the applicant was admitted in Shivji Childcare Hospital, Chandrapur therefore it caused delay in filing the present application. It is submitted on behalf of the applicant that the delay caused is not intentional and prayed for condonation of delay.

3. Vehemently objecting the application of the applicant, the learned counsel for the non-applicant submits that by the present revision application the applicant himself is

challenging the order of condonation of delay passed by the learned District Judge, Chandrapur and himself is seeking condonation of delay. According to him, the applicant has not explained the delay properly, he has to explain the delay on each day which is not done by him. He submits that no record showing rejection of his leave has been filed on record therefore he sought rejection of the presnet application. To buttress his submission, he has placed reliance on the decision of ***Mahant Bikram Dass Chela Vs. Financial Commissioner, Revenue, Punjab, Chandigarh and others***¹, wherein the scope of section 5 of the Limitation Act has been enumerated and it has been held that one ought not easily to take away a right which has accrued to a party by lapse of time and that therefore a litigant who is not vigilant about his rights must explain everyday delay. The reliance is also placed on the decision of ***Matsyodari Shikshan Sanstha, Jalna Vs. Nandkumar S/o Santram Malshkhare***², wherein this Court has held that 'take a chance litigation' is not to be encouraged. According to him, the applicant is taking chance by way of present application to see that the order of condonation of delay by District Court should be set aside.

4. Replying to the submission of the learned counsel for the non-applicant, the learned counsel for the applicant submits that each delay must be explained does not mean that pedantic approach should be made. Whether the delay is *malafide* is the fact to be considered while considering the delay. To support his arguments, he seeks to rely on recent

¹ (1977) 4 SCC 69

² 2022 (4) MhLJ 447

decision of Hon'ble Supreme Court in the case of ***Raheem Shah and another Vs. Govind Singh and others***¹, wherein the Hon'ble Supreme Court in para 4 held as under:

"4. This Court in the case of Collector, Land Acquisition, Anantnag & Anr. Vs. Mst. Katiji & Ors. reported in (1987) 2 SCC 107 has 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 '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. It 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.”

5. Considering the documents on record i.e. discharge certificate of daughter of the applicant which goes to show that his daughter was admitted in hospital, nothing has been brought on record to show that the delay is caused on account of *malafide* and on account of not taking immediate steps. Considering the aforesaid documents and the reasons mentioned in the application, the applicant has made out a case for condonation of delay and no prejudice is going to be caused to the non-applicant. So far as inconvenience caused to the non-applicant is concerned, in my view, the following order would suffice the purpose. Hence, following order :

- i. The application is allowed.
- ii. The delay of 80 days in filing the revision application is condoned subject to payment of costs of Rs.3,000/- to the High Court Legal Services Sub-committee, Nagpur within two weeks from today.
- iii. The application is disposed of.
- iv. Registry to register the revision application.

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6. Heard.

7. The order 13.10.2022 passed by the learned District Judge-3, Chandrapur in Civil Miscellaneous Application No.27/2017 allowing condonation of delay of 2 ½ years caused in preferring the appeal has been challenged in this revision application.

8. Issue notice for final disposal at admission stage to the non-applicant.

9. Shri Tufel Sharif, learned counsel holding for Shri Yash Kollarwar, learned counsel, waives service of notice on behalf of sole non-applicant and prays for time to file reply.

10. Stand over 21.03.2024

JUDGE

Wagh