



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

SECOND APPEAL NO.327 OF 2021

Hariprasad s/o Pandhari Burbure

Vs.

Anil s/o Tukaramji Sawarkar and another

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

Court's or Judge's orders.

Shri S.S. Shingane, Advocate for appellant.

Shri S.D. Ambade, Advocate for respondent no.1.

CORAM : M.W. CHANDWANI, J.

DATE : 06.09.2024.

1. Notice has been issued on the following substantial question of law:

“In view of the cause shown in the application for condonation of delay, in filing First Appeal, whether rejection of the application for condonation of delay, is just and proper?”

2. It is not necessary to go into the matrix of the case filed by the appellant before the learned trial Court in detail, suffice to say that the said suit was partly decreed. Feeling aggrieved with the said decree, the appellant preferred an appeal after a delay of 312 days. Alongwith the appeal, an application for condoning the said period also came to be filed, which came to be rejected by the impugned order of the learned District Judge in Civil Miscellaneous Application No.34 of 2018.

3. Heard Shri S.S. Shingane, learned counsel appearing on behalf of the appellant. He submitted that the appellant has shown sufficient cause before the first appellate Court by producing medical certificate on record. The contention is that the appellant came to know about the judgment dated 30.08.2016 on 01.10.2016 and applied for certified copies on 01.10.2016. The certified copies were ready on 04.11.2016. Thereafter, he was out of station for attending the marriage of his relative and after that he suffered from Hepatitis-B. Again, he was busy for a month and again from 18.08.2017 to 17.10.2017, he was suffering from back pain and was bedridden. He approached his counsel in the last week of October 2017. Again, he applied for certified copies of deposition, plaint and written statement and thereafter the appeal came to be filed on 22.12.2017. This aspect has not been considered properly by the Courts below and rejected the application.

4. Learned counsel for the appellant submits that the word “sufficient cause” has to be liberally construed. Day-to-day delay is not required to be explained and only cause is required to be shown, which has been done by the appellant in this case. According to him, substantial justice cannot be denied for technical reasons as there is no *malafide* on the part of the appellant and this aspect has not been considered by the first appellate Court. Hence, he seeks the order of the first appellate Court be set aside by allowing the appeal.

5. Conversely, Shri S.D. Ambade, learned counsel appearing on behalf of respondent no.1, vehemently submits that the first appellate Court has very well considered each reason given by the appellant and after considering the reasons, the first appellate Court has found that the appellant has acted negligently and that the cause was not sufficient and therefore, rightly rejected the application for condonation of delay in filing the first appeal. According to him, in the case of *Basawaraj Vs. the Special Land Acquisition Officer*¹, the Supreme Court has interpreted word the “sufficient” in para 9 of the decision, which reads as under:

“9. Sufficient cause is the cause for which defendant could not be blamed for his absence. The meaning of the word "sufficient" is "adequate" or "enough", inasmuch as may be necessary to answer the purpose intended. Therefore, the word "sufficient" embraces no more than that which provides a platitude, which when the act done suffices to accomplish the purpose intended in the facts and circumstances existing in a case, duly examined from the view point of a reasonable standard of a cautious man. In this context, "sufficient cause" means that the party should not have acted in a negligent manner or there was a want of bona fide on its part in view of the facts and circumstances of a case or it cannot be alleged that the party has "not acted diligently" or "remained inactive". However, the facts and circumstances of each case must afford sufficient ground to enable the Court concerned to exercise discretion for the reason that whenever the Court exercises discretion, it has to be exercised judiciously. The applicant must satisfy the

1 AIR 2014 SC 746 : 2013 AIR SCW 6510

Court that he was prevented by any “sufficient cause” from prosecuting his case, and unless a satisfactory explanation is furnished, the Court should not allow the application for condonation of delay. The court has to examine whether the mistake is bona fide or was merely a device to cover an ulterior purpose.

(See: Manindra Land and Building Corporation Ltd. v. Bhootnath Banerjee & Ors., AIR 1964 SC 1336; Lala Matadin v. A. Narayanan, AIR 1970 SC 1953; Parimal v. Veena @ Bharti, AIR 2011 SC 1150; and Maniben Devraj Shah v. Municipal Corporation of Brihan Mumbai AIR 2012 SC 1629.)”

6. Perusal of the application for condonation of delay filed by the appellant before the first appellate Court and the impugned order would reveal that there is a delay of 312 days in preferring the first appeal and the cause shown in the application for condonation of delay is manifold. Firstly, he was not aware about the decision of the suit and came to know only on 01.10.2016. Secondly, he was out of station for attending the marriage of his close relative from 01.11.2016 to 02.12.2016. Thereafter, he was suffering from Hepatitis-B from 03.12.2016 to 14.07.2017, and from 16.07.2017 to 17.08.2017 he was busy with personal work. Again from 18.08.2017 to 17.10.2017 he was suffering from back pain and was bedridden. Lastly, as the per instructions of his counsel, he again applied for certified copies of deposition, plaint and written statement, and thereafter, the appeal came to be filed.

7. The first appellate Court relying on the judgment of *Basawaraj (supra)* has observed that, negligence on the part of the advocate cannot be a ground to claim condonation of delay and thereafter the first appellate Court proceeded to record that even when the certified copies were ready on 04.11.2016, they were not collected immediately on 04.11.2016 and six additional days were taken to collect the same, for which there is no explanation.

8. It is also claimed that the appellant was out of station for attending the marriage of his close relative from 11.11.2016 to 02.12.2016 for about 20 days. Neither the relation has been mentioned nor the invitation card was annexed with the application. In these days, staying at a relative's place for about 20 days on account of marriage function is indigestible, particularly, when nothing has been placed on record to show that there was a marriage function. Further, the appellant has claimed that from 16.07.2017 he was out of station for a month for personal work but, no details have been mentioned in the application.

9. Be that as it may, though the medical certificate showing that the appellant was suffering from Hepatitis-B from 03.12.2016 to 14.07.2017 has been placed on record but no medical certificate with regard to the period from 18.08.2017 to 17.10.2017 showing that the appellant was suffering from back pain has been filed on record, particularly, when he was bedridden. Obviously, a person

suffering from back pain being bedridden, must have taken medical treatment but no document is filed for the said period. At least, the prescription of the doctor who was treating him should have been filed on record but that also has not been produced. Most particularly, when the appellant met his counsel in October 2017 asking him for documents including deposition, the appellant ought to have mentioned the details of the same but no details have been mentioned in the application for condonation of delay regarding the application for certified copies of the deposition, plaint and written statement for preferring an appeal for which the condonation of delay has been sought.

10. No doubt, for delay, sufficient cause should receive a liberal construction so as to advance substantial justice as held by the Supreme Court in the case of *Ram Nath Sao @ Ram Nath Sahu Vs. Gobardhan Sao*¹ provided that there is no negligence or no inaction on the part of the litigant. No doubt, the party is not required to explain day-to-day delay but at least, cause for that delay should be a sufficient cause.

11. Considering the fact that no explanation has been given by the appellant as to why there was a delay in accepting the certified copies coupled with the non-submission of medical certificate for the period beginning from 18.08.2017 and 17.10.2017 and absence of vital details

¹ 2002 (3) SCC 195 : 2002 (2) Supreme 143

for the period from 11.11.2016 to 02.12.2016 as well as from 16.07.2017 to 17.08.2017, in my view, the first appellate Court has rightly held that sufficient cause is not properly explained. Therefore, no fault can be seen in the findings of the learned first appellate Court. No substantial question of law arises in this appeal. Accordingly, the appeal stands dismissed.

JUDGE

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