



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

CIVIL APPLICATION (CAO) NO. 54 OF 2022
IN
MISC. CIVIL APPLICATION (ST.) NO. 16673 OF 2021
IN
SECOND APPEAL NO. 301 OF 2010 (D)

Nasir Khan S/o Samser Khan

..VS..

Shri Krishna S/o Dadaji Kukde and others

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

Court's or Judge's orders

Mr. Syed Owais Ahmed, Advocate for applicant.

Mr. V. V. Dhande, Advocate for non-applicants.

CORAM : SANJAY A. DESHMUKH, J.

DATED : 20th JUNE, 2024

Heard learned Advocate for the parties.

2. This is an application for condonation of delay filed under Section 5 of the Limitation Act. The applicant's Second Appeal No.301/2010 was dismissed in default on 24.12.2014 therefore, the applicant has filed this application for condonation of delay of 2530 days caused to file restoration application.

3. Learned Advocate for the applicant pointed out and submitted that the applicant could not pursue the appeal because of his illness. He had filed copies of papers of medical treatment on record. He submitted that though the applicant appeared in the execution proceeding, he continued to suffer by illness. He therefore, further submitted that delay is not intentionally caused and if the appeal is not heard on

merit, the applicant will suffer a lot, therefore, he prayed to allow the application.

4. Learned Advocate for the applicant to support his contention has relied upon the authority of ***State of Nagaland Vs. Lipok AO & Ors.***, reported in ***2005 Cri.L.R. (SC) 561***. Para No.14 reads as under :

“14. In O. P. Kathpalia v. Lakhmir Singh (1984 (4) SCC 66), a Bench of three Judges had held that if the refusal to condone the delay results in grave miscarriage of justice, it would be a ground to condone the delay. Delay was accordingly condoned. In Collector Land Acquisition v. Katiji (1987 (2) SCC 107), a Bench of two Judges considered the question of the limitation in an appeal filed by the State and held that Section 5 was enacted in order to enable the court to do substantial justice to the parties by disposing of matters on merits. The expression "sufficient cause" is adequately elastic to enable the court 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. This Court reiterated that the expression "every day's delay must be explained" does not mean that a pedantic approach should be made. The doctrine must be applied in a rational common sense pragmatic manner. 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. 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. Judiciary is not respected on account of its power to legalise 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. The fact that it was the State which was seeking condonation and not a private party was altogether irrelevant. The doctrine of equality before law demands that all litigants, including the State as a litigant, are accorded the same treatment and the law is administered in an even-handed manner. There is no warrant for according a step-motherly treatment when the State is the applicant. The delay was accordingly condoned.”

He has further relied on the case of ***Collector, Land Acquisition, Anantnag & Anr. Vs. Mst. Katiji & Ors.***, reported in ***1987 AIR (SC) 1353***. Para No.3 reads as under :

“..... Making a justice-oriented approach from this perspective, there was sufficient cause for condoning the delay in the institution of the appeal. The fact that it was the 'State' which was seeking condonation and not a private party was altogether irrelevant. The doctrine of equality before law demands that all litigants, including the

State as a litigant, are accorded the same treatment and the law is administered in an even-handed manner. There is no warrant for according a stepmotherly treatment when the 'State' is the applicant praying for condonation of delay. In fact experience shows that on account of an impersonal machinery (no one in charge of the matter is directly hit or hurt by the judgment sought to be subjected to appeal) and the inherited bureaucratic methodology imbued with the note-making, file pushing, and passing on the buck ethos, delay on its part is less difficult to understand though more difficult to approve. In any event, the State which represents the collective cause of the community, does not deserve a litigant non grata status. The Courts therefore have to be informed with the spirit and philosophy of the provision in the course of the interpretation of the expression "sufficient cause". So also the same approach has to be evidenced in its application to matters at hand with the end in view to do even-handed justice on merits in preference to the approach which scuttles a decision on merits. Turning to the facts of the matter giving rise to the present appeal, we are satisfied that sufficient cause exists for the delay. The order of the High Court dismissing the appeal before it as time barred, is therefore. set aside. Delay is condoned."

5. Learned Counsel for the applicant lastly submitted that there is a sufficient cause for condonation of delay. *Prima facie* case is established by the applicant, he, therefore, prayed to allow the application and condoned the delay in the interest of justice.

6. Learned Advocate for the respondents strongly opposed the application and pointed out an affidavit-in-reply filed by the respondent No.1. He submitted that execution proceeding bearing R.D. No.173/2017 was filed by the respondent in the Court of Joint Civil Judge Senior Division, Nagpur. Though notice was served, but till 17.01.2019 the applicant did not appear for more than ten dates and thereafter, on 05.03.2019 one Advocate filed his appearance Memo and the applicant was just monitoring the execution proceeding. On 12.02.2021, an order was passed on an application for granting possession warrant filed by the respondent. Thereafter six months, on 28.10.2021, the applicant filed Vakalatnama of his another Advocate in the said execution proceeding. This conduct of the applicant shows that he plays with the law therefore, he prayed for rejection of the application as there is no sufficient and bonafide reason for condonation of delay.

7. Learned Advocate for the respondent has relied upon the judgment passed by the Hon'ble Supreme Court in ***Civil Appeal No. 7696 of 2021, Majji Sannemma @ Sanyasirao Vs. Reddy Sridevi & Ors.***, decided on 16.12.2021. Para No.8 is reads as under:

“8. Applying the law laid down by this Court in the aforesaid decisions to the facts of the case on hand and considering the averments in the application for condonation of delay, we are of the opinion that as such no explanation much less a sufficient or a satisfactory explanation had been offered by respondent

Nos.1 and 2 herein – appellants before the High Court for condonation of huge delay of 1011 days in preferring the Second Appeal. The High Court is not at all justified in exercising its discretion to condone such a huge delay. The High Court has not exercised the discretion judiciously. The reasoning given by the High Court while condoning huge delay of 1011 days is not germane. Therefore, the High Court has erred in condoning the huge delay of 1011 days in preferring the appeal by respondent Nos.1 and 2 herein – original defendants. Impugned order passed by the High Court is unsustainable both, on law as well as on facts.”

Learned Advocate for the respondent further relied upon the judgment passed by the Hon’ble Supreme Court in ***Special Leave Petition (Civil) No. 31248/2018, Pathapati Subba Reddy (Died) By LRs. & Ors. Vs. The Special Deputy Collector(LA)***, decided on 08.04.2024. Para No.26 reads as under :-

“26. On a harmonious consideration of the provisions of the law, as aforesaid, and the law laid down by this Court, it is evident that:

- (i) Law of limitation is based upon public policy that there should be an end to litigation by forfeiting the right to remedy rather than the right itself;*
- (ii) A right or the remedy that has not been exercised or availed of for a long time must come to an end or cease to exist after a fixed period of time;*
- (iii) The provisions of the Limitation Act have to be construed differently, such as Section 3*

has to be construed in a strict sense whereas Section 5 has to be construed liberally;

- (iv) In order to advance substantial justice, though liberal approach, justice-oriented approach or cause of substantial justice may be kept in mind but the same cannot be used to defeat the substantial law of limitation contained in Section 3 of the Limitation Act;*
- (v) Courts are empowered to exercise discretion to condone the delay if sufficient cause had been explained, but that exercise of power is discretionary in nature and may not be exercised even if sufficient cause is established for various factors such as, where there is inordinate delay, negligence and want of due diligence;*
- (vi) Merely some persons obtained relief in similar matter, it does not mean that others are also entitled to the same benefit if the court is not satisfied with the cause shown for the delay in filing the appeal;*
- (vii) Merits of the case are not required to be considered in condoning the delay; and*
- (viii) Delay condonation application has to be decided on the parameters laid down for condoning the delay and condoning the delay for the reason that the conditions have been imposed, tantamounts to disregarding the statutory provision.”*

8. The averments in the application is that he was suffering from the illness. His Medical Certificate dated 16.08.2013 shows that his treatment was continued till 08.03.2014. Discharge summary of the applicant shows that he was admitted in the hospital from 15.11.2018 till 24.11.2018 for his treatment of “DM with HTN with

Pyelonephritis with Cholelithiasis with Rental Calculus with Hynonatremia”. Another discharge summary shows date of admission is 13.06.2019 and date of discharged is 15.06.2019 for the same illness. The learned Counsel for the applicant further pointed out the additional affidavit of applicant in support of condonation of delay application. He submitted the document Nos. 1 to 3, in which visiting date of doctor is 02.03.2019 and the applicant was advised to admit in I.C.U. There are other discharge summaries which shows that the applicant was continuously under treatment. This shows that the applicant was not feeling well and though he appeared in the execution proceeding through Advocate, he had not proceeded to file the application for condonation of delay and therefore, huge delay of 2530 days is caused.

9. It is well settled that the Court has to take justice oriented liberal approach while condoning delay, which is also pointed out in the authority of ***Pathapati Subba Reddy*** (supra) filed by the respondent in sub-para No.3 of para No.26, that Section 5 has to be construed liberally. The property rights of the parties are in dispute that are to be decided on merit. If the delay is not condoned, certainly the applicant will suffer huge loss.

10. Considering these aspects, this Court is of the view that though the applicant did appear in the execution proceeding and did not file the application for condonation of delay, the delay can be condoned by awarding certain costs to compensate the respondent by adopting pragmatic approach in the justice oriented

process of condonation of delay. The application deserves to be allowed on condition that applicant shall pay costs of Rs.10,000/- to the respondent. Hence, the following order :

The application is allowed subject to condition that the applicant shall deposit costs of Rs.10,000/- (Ten Thousand only) within a period of fifteen days from today, which shall be paid to the respondent.

The application is **disposed of**.

MISC. CIVIL APPLICATION (ST.) NO. 16673 OF 2021.

In view of the detailed reasons recorded in the Civil Application (CAO) No.54/2022, this restoration application is **allowed**. Subject to depositing costs of Rs.10,000/- (Rs. Ten Thousand only), appeal be restored on its original stage.

SECOND APPEAL NO. 301 OF 2010.

Learned Counsel for the appellant seeks leave to file copy of the paper book. Leave is granted as prayed.

Stand over to **05.07.2024** at 02.30 pm.

(SANJAY A. DESHMUKH, J.)