



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CIVIL APPLICATION NO. 9290 OF 2025
IN
REVIEW APPLICATION (STAMP) NO. 20478 OF 2025

1. Prerna Shikshan Prasarak Mandal
Degloor, Tq. Degloor, Dist. Nanded.
Through its secretary,
Madhukar s/o Raoji Bhaskare,
Age 58 years, Occu. Secretary,
R/o. Degloor, Tq. Degloor, Dist. Nanded.
2. Laxman s/o Bhujangrao Kambale
Age: 49 years, Occu. Headmaster,
Dub and Dead Vidyalaya, Degloor,
Tq. Degloor, Distl Nanded.

...APPLICANTS

[Ori. Respondent No. 4 and 5]

VERSUS

1. Gajanan s/o. Vishwanath Nawalkar
Age: 48 years, Occu. Service,
R/o. Peth Amrapurkar Galli,
Degloor, Tq. Degloor, Dist. Nanded
2. The State of Maharashtra
Through its Principal Secretary
Social Justice & Special Assistance Division
Mantralaya, Mumbai.
3. Mr. Prernadesh Bhartar,
Age: Major, Occu. Service as
The Commissioner
Welfare for Handicapped Person,
Maharashtra State, Pune.
4. Mr. Malwalkar,
Age: Major, Occu. Secretary,
Prerna Shikshan Prasarak Mandal,
Degloor, Tq. Degloor, Dist. Nanded.

...Orig. Petitioner

5. Mr. Rathod
Age: Major, Occ. Service,
Divisional Social Welfare Officer,
Zilla Parishad, Nanded

...RESPONDENTS

[Ori. Respondent No. 1 to 3 & 6]

Mr. V.D. Salunke, Advocate for applicants

Mr. V.D. Sapkal, Senior Advocate i/b. Mr. Vijay Y. Patil, Advocate for
respondent No. 1

Mr. N.D. Batule, AGP for State

.....

**CORAM : NITIN B. SURYAWANSHI AND
VAISHALI PATIL JADHAV, J.J.**

RESERVED ON : 14th NOVEMBER, 2025

PRONOUNCED ON : 18th DECEMBER, 2025

ORDER : [PER NITIN B. SURYAWANSHI, J.]

1. By this application applicants seek condonation of delay of 07 years, 03 Months and 24 days in filing review application, seeking review of the order dated 09.03.2018 passed in Writ Petition No. 1630 of 2018 (for short hereinafter referred to as 'said order').

2. In the application, applicants have stated that, "*said order is passed without service of notice and without hearing the present applicants/petitioners which itself is mentioned in the order by the Hon'ble Court that, 'notices are awaited', still, the petition is disposed of flouting the principles of natural justice which is base of judicial system. Hence, the petitioners/applicants filed review petition, however, there is delay of 07 years, 03 months and 24 days, hence,*

this application for condonation of delay is filed."

3. It is further claimed that, order dated 09.03.2018 being exparte order, it was not in the knowledge of applicants, however, respondent no. 1 filed Contempt Petition No. 156/2021 and upon service of its notice, applicants appeared in the contempt petition on 24.07.2023. They filed reply in the contempt petition and pointed out that the order is exparte, without notice and hearing and hence not binding on them and they have not committed any contempt. As even they were not party as stated in the contempt petition because wrong names were shown.

4. It is further stated, same petitioner had filed Writ Petition No. 13621 of 2021, in which order was passed on 19.07.2022 directing to comply with the order passed by the Division Bench and said petition was disposed of. *"Surprising to note that even in the said writ petition order dated 19.07.2022 was passed without hearing the Management i.e. respondent No. 5. Even no notice was served to it. It is further stated that even present respondent No. 1 had filed one more Contempt Petition No. 133 of 2023 for non compliance of the order dated 19.07.2022. Present applicants have filed reply affidavit in the month of March-2024 and the same stand was taken wherein, applicants were under bonafide impression that in both the petitions,*

orders are passed without service of notice and hearing to them and directions are issued against Social Welfare Officer and therefore they were not affected and thereby order need not be challenged."

".....when the contempt petition was being heard on 03.07.2024, wherein, the Hon'ble Court invited attention of our counsel that, even in the order under review there is direction that the respondent nos. 4 and 5 should pay salary from their accounts. This Hon'ble Court was of the opinion that, the present applicants should have challenged that order, then and then only petitioners came to know that, order even affecting them and passed adverse to their interest that too without notice and hearing to them and accordingly, above said review petition is filed and there is no intentional or deliberate delay in filing the review petition."

"..... Applicants submits that as stated above the order is exparte and they had no knowledge till the notice in the contempt petition was served to them on 27.06.2023. Therefore, for a long period of 09.03.2018 to 25.07.2023, they had no knowledge of the said order. In other words, they had no occasion to look into the directions which were affecting them. Thereafter, as stated above, they are before the contempt Court and first time on 03.07.2025 the Hon'ble Court asked that though the order is exparte, they could have challenged it, this review petition is immediately filed therefore, there

is no delay or latches on their part, however, whatever delay is caused is not intentional, but it is under bonafide believe that, there is no order against them and order is not binding as it was passed without notice and hearing to them." On these grounds, the delay is sought to be condoned. Learned advocate for the applicants has reiterated these statements in his arguments. In support of the application, he has also relied on ***Esha Bhattacharjee vs. Managing Committee of Raghunathpur Nafar Academy & Others***¹ and ***A.R. Antulay Vs. R.S. Nayak***².

5. Respondent No. 1 has opposed the application by filing affidavit in reply and placing the correspondence and other documents on record. It is contended that applicants have made false statements in the application. Applicants were well aware of the order passed by this Court at that point of time only and they have partially acted upon the said order. Applicants were absconding from 2008 to 2016. Since the applicants have failed to explain the inordinate delay, the application deserves to be dismissed with costs. In support of arguments, learned Senior Advocate for respondent No. 1 has placed reliance on ***State of Jharkhand vs. Ashok Kumar Chokhani***³ to contend that while dealing with the application for condonation of delay in filing

1 2013 DGLS (SC) 743

2 1988 DGLS(SC) 327

3 (2009) 2 SCC 667

appeal, merits of the case cannot be considered. Reliance is also placed on *Oriental Aroma Chemical Industries Limited Vs Gujarat Industrial Development Corporation And Another*⁴ to contend that if incorrect and false statements are made in the application, the discretion should not be exercised in favour of condonation of delay. By relying on *Pathapati Subba Reddy (Died) By L.Rs. And Others Vs. Special Deputy Collector (LA)*⁵ he submits that if sufficient cause is not shown for condonation of delay, the Court may refuse to condone the delay depending on the bonafides of the party.

6. Heard learned advocate for the applicants, learned Senior Advocate for respondent No. 1 and learned AGP for State. Perused the record.

7. Record indicates that on 05.12.2016, a letter was addressed by the petitioner to applicant No. 2 requesting him to permit the petitioner to resume duty and that he has filed Writ Petition No. 1630 of 2008. By letter dated 27.03.2018, petitioner requested the Secretary of Applicant No. 1 to allow him to resume duty as per the order passed by this Court on 09.03.2018. The Secretary has made an endorsement on the said letter that pursuant to the decision of this Court, Headmaster to permit the petitioner to resume the duty. On

4 (2010) 5 SCC 459

5 2024 SCC OnLine SC 513

30.01.2019, District Social Welfare Officer addressed a letter to applicants by giving reference of the Court matter and directed them to proceed as per the directions of Commissioner of Persons with Disabilities Welfare Department.

8. By letter dated 16.07.2018, District Social Welfare Officer/respondent No. 5 directed applicants to allow the petitioner to resume the duty as per the orders of this Court, failing which their salary and non salary grants will be stopped. In compliance of the order of this Court dated 09.03.2018, applicants submitted roster for verification to respondent No. 5, wherein petitioner's name appears at serial no. 5 in the staff list of applicants, he forwarded it to respondent No. 3 for verification on 01.06.2019. Applicant No. 2 addressed a letter to respondent No. 5 on 01.08.2018 by giving reference of this Court's order that petitioner is permitted to resume the duty. Copy of said letter is also marked to applicant No. 1.

9. Respondent/Original Petitioner has placed on record copy of letter dated 03.11.2018 addressed by District Social Welfare Officer, Zilla Parishad Nanded to the advocate informing him that this Court has decided Writ Petition No. 1630 of 2008 filed by the petitioner and the Institution has allowed the petitioner to resume the duty on 01.08.2018 and has submitted proposal for approval of his services.

10. The above record clearly shows that the applicants were well aware of the writ petition and the order passed therein since 2018. They have acted upon and partially implemented the orders passed by this Court. It appears that an afterthought stand is taken by the applicants when they were required to pay the arrears of salary of the petitioner. Therefore, their stand that the orders were *ex parte* and they were not aware of the same and for the first time they came to know about it when they appeared in the contempt petition is patently false, unacceptable and liable to be rejected. Making incorrect statements by the applicants reflect that applicants have not come before the Court with clean hands and have put forth totally incorrect and false grounds for condonation of delay. It is thus evidence that applicants have failed to make out sufficient ground for condonation of inordinate delay of 07 years, 03 months and 24 days.

11. The applicants have averred that they got knowledge of the order after they appeared in the contempt petition in the year 2023. If according to the applicants orders were *ex parte* and were adverse to their interest, the applicants ought to have filed review application in the year 2023 itself. There is no explanation on the part of applicants as to why no review was filed in the year 2023.

12. In Esha Bhattacharjee (supra), principles for delay condonation are culled out as follows:

“15. 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.”

13. In the present case, applicants have failed to show sufficient cause for condonation of inordinate delay of more than 7 years. In view of lack of bonafides on the part of applicants, they are not entitled for the discretionary relief. Taking into consideration the conduct, behaviour and approach of the applicants and as the explanation offered by the applicants is concocted, afterthought and false, we refuse to exercise discretion in their favour.

14. Following observations of the Apex Court in Oriental Aroma Chemical Industries Limited (supra) are applicable to the facts of the present case;

“18. A reading of the impugned order makes it clear that the High Court did make a bald reference to the application for condonation of delay filed by the respondents but allowed the same without advertting to the averments contained therein and the reply filed on behalf of the appellant. Not only this, the High Court erroneously assumed that the delay was of 1067 days, though, as a matter of fact, the appeal was filed after more than four years. Another erroneous assumption made by the High Court was that the appellant had not filed reply to controvert the averments contained in the application for condonation of delay.

19. It may have been possible for this Court to ignore the first error in the impugned order because by deleting the figures and words “4 years and 28” in paragraphs 2 and 3 of the application and substituting the same with the figure 1067, the respondents misled the High Court in believing that the delay was of 1067 days only but it is not possible to fathom any reason why the Division Bench of the High Court omitted to consider the detailed reply which had been filed on behalf of the appellant to contest the prayer for condonation of delay. Notwithstanding this, we may have set aside the impugned order and remitted the case to the High Court for fresh disposal of the application filed by the respondents under Section 5 of the Limitation Act but, do not consider it proper to adopt that course, because as will be seen hereinafter, the respondents did not approach the High Court with clean hands.

20.

25. From what we have noted above, it is clear that the Law Department of respondent No.1 was very much aware of the proceedings of the first as well as the second suit. In the first case, Ms. Rekhaben M. Patel was appointed as an advocate and in the second case Shri B.R. Sharma was instructed to appear on behalf of the respondents, but none of the officers is shown to have personally contacted either of the advocates for the purpose of filing written statement and preparation of the case and none bothered to appear before the trial Court on any of the dates of hearing.

26. It is a matter of surprise that even though an officer of the rank of General Manager (Law) had issued instructions to Ms.

Rekhaben M. Patel to appear and file vakalat as early as in May 2001 and Manager (Law) had given vakalat to Shri B.R. Sharma, Advocate in the month of May 2005, in the application filed for condonation of delay, the respondents boldly stated that the Law Department came to know about the ex parte decree only in the month of January/February 2008. The respondents went to the extent of suggesting that the parties may have arranged or joined hands with some employee of the corporation and that may be the reason why after engaging advocates, nobody contacted them for the purpose of giving instructions for filing written statement and giving appropriate instructions which resulted in passing of the ex parte decrees.

27. In our view, the above statement contained in para 1 of the application is not only incorrect but is ex facie false and the High Court committed grave error by condoning more than four years' delay in filing of appeal ignoring the judicially accepted parameters for exercise of discretion under Section 5 of the Limitation Act."

15. In Pathapati Subba Reddy (supra) the Apex Court has observed thus:

"17. It must always be borne in mind that while construing 'sufficient cause' in deciding application under Section 5 of the Act, that on the expiry of the period of limitation prescribed for filing an appeal, substantive right in favour of a decree-holder accrues and this right ought not to be lightly disturbed. The decree-holder treats the decree to be binding with the lapse of time and may proceed on such assumption creating new rights.

18. This Court as far back in 1962 in the case of Ramlal Motilal and Chhotelal vs. Rewa Coalfields Ltd (AIR 1962 SC 361) has emphasized that even after sufficient cause has been shown by a party for not filing an appeal within time, the said party is

not entitled to the condonation of delay as excusing the delay is the discretionary jurisdiction vested with the court. The court, despite establishment of a 'sufficient cause' for various reasons, may refuse to condone the delay depending upon the bona fides of the party.

19. ----

22. *It has also been settled vide State of Jharkhand & Ors. vs. Ashok Kumar Chokhani & Ors., (2009) 2 SCC 667, that the merits of the case cannot be considered while dealing with the application for condonation of delay in filing the appeal.*

23. *In Basawaraj vs. Special Land Acquisition Officer (2013) 14 SCC 81, this Court held that discretion to condone the delay has to be exercised judiciously based upon the facts and circumstances of each case. The expression 'sufficient cause' as occurring in Section 5 of the Limitation Act cannot be liberally interpreted if negligence, inaction or lack of bona fide is writ large. It was also observed that even though limitation may harshly affect rights of the parties but it has to be applied with all its rigour as prescribed under the statute as the courts have no choice but to apply the law as it stands and they have no power to condone the delay on equitable grounds."*

16. Applying aforesaid ratio to the facts of the present case, negligence, inaction and lack of bonafide on the part of applicants is writ large on the face of record and therefore, they are not entitled for condonation of enormous delay of more than 7 years. In view of ratio in Ashok Kumar Chokhani (supra) the merits cannot be considered

while dealing with the application for condonation of delay in filing appeal.

17. From the averments made in the application, applicants have tried to put entire blame for causing delay in filing review on this Court by saying that this Court was of the opinion that applicants should have challenged that order. Then and then only applicants came to know that order even affecting them and passed adverse to their interest that too without notice and hearing to the them and accordingly above said review petition is filed. As if the applicants are obliging this Court by filing review petition. From the tenor of application it seems that applicants have no regards to the orders of the Court and they have gone to the extent of making false statements in the application, some of which have flavour of contemptuous language. This approach of the applicants is deprecated. The statements quoted in the inverted commas in the foregoing paragraphs are not in good taste and applicants should have been advised not to make such statements.

Lord Reid in *Rondel v. Worsley*⁶, has said, "*Every counsel has a duty to his client fearlessly to raise every issue, advance every argument, and ask every question, however distasteful, which he thinks will help his client's case. As an officer of the Court concerned in*

6 (1967) 3 ALL ER 993, 998

the administration of justice, he has an overriding duty to the court, to the standards of his profession, and to the public, which may and often does lead to a conflict with his client's wishes or with what the client thinks are his personal interests. Counsel must not mislead the court, he must not lend himself to casting aspersions on the other party or witnesses for which there is no sufficient basis in the information in his possession, he must not withhold authorities or documents which may tell against his clients but which the law or the standards of his profession require him to produce. By so acting he may well incur the displeasure or worse of his client so that if the case is lost, his client would or might seek legal redress if that were open to him."

Lord Denning, *M.R. in Rondel v. W*⁷ has said, "He (the counsel) has time and again to chose between his duty to his client and his duty to the court. This is a conflict often difficult to resolve; and he should not be under pressure to decide it wrongly... When a barrister or an advocate puts his first duty to the court, he has nothing to fear."

18. In the light of above, we are of the considered view that applicants should have been advised to refrain from making such statements. We hope and trust that such pleadings would not be repeated in future.

⁷ (1966) 3 ALL ER 657

19. For the aforestated reasons, civil application being devoid of merit is dismissed.

(VAISHALI PATIL JADHAV, J.)

(NITIN B. SURYAWANSHI, J.)