



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

CRIMINAL APPLICATION (APPA) NO.5/2019 IN
CRIMINAL APPEAL NO. /2019

(M. S. Electricity Distribution Company Ltd. Vs Prakash Jaiswal)

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

Court's or Judge's orders

Mr. A. M. Quazi, Advocate for applicant.
Mr. A. Manohar, Advocate for non-applicant.

CORAM: M. M. NERLIKAR, J.
DATED : 15/12/2025.

Heard the learned counsel for the applicant and
the learned counsel for the non-applicant.

2. The present application is for condonation of delay
of 397 days in preferring the criminal appeal. The learned
counsel for applicant submits that the applicant is
Maharashtra State Electricity Distribution Company
Limited and due to administrative difficulties, the appeal
could not be filed within time. He has invited my attention
to paragraph Nos. 3 and 4 of the present application which
read as under:-

*“3 It is submitted that thereafter the certified
copy was supplied to the office of the local
counsel MSEDCL, Bhandara and the counsel
had suggested that the necessary action
against the said order can be taken by
MSEDCL, and therefore the legal opinion was*

sought from the advocate on panel by MSEDCL.

4 It is submitted that the panel advocate suggested that the MSEDCL/Appellant can challenge the judgment before the Hon'ble High Court by filing the criminal appeal and therefore, the said matter was entrusted to the present Counsel for filing of criminal Appeal in the month of November. It is submitted that thereafter the present Advocate informed to MSEDCL Bhandara that in order to prefer the criminal appeal, necessary arrangements are required to be made by providing certified copies, sets of Xerox documents etc. It is submitted that MSEDCL being a statutory body having its legal departments, provided the entire brief along with the documents to the present counsel in the month of November, 2018. Thereafter the present Criminal Appeal came to be drafted and the same is being filed before this Hon'ble court at the earliest opportunity, without causing any further delay.”

3. The learned counsel for the applicant submits that he may be permitted to file additional affidavit to explain delay or at least be permitted to lead the evidence in

support of the contentions which have been raised. He has relied on the judgment of the Supreme Court in the case of *Executive Officer, Antiyur Town Panchayat Vs. G. Arumugam (D) by Lrs, 2015(4) WBLR 7*. Paragraph No. 2 reads as under:-

“2. In the additional affidavit filed on behalf of the appellant on 12.12.2006, it is brought to the notice of Court that Shri K. G. Ramasamy, who was working as Executive Officer of the Panchayat at the relevant time was suspended from service w.e.f. 12.07.2002 on allegations of corruption. Be that as it may, after going through the records and after hearing the counsel on both sides, we are satisfied that the delay occasioned only on account of the deliberate lapses on the part of the Executive Officer of the Panchayat at the relevant time. Who else are involved in the process, is not quite clear.”

He has further relied on the judgment of this Court in case of *Shalen Dmello Vs. Ruby Victoria and others, 2023 DGLS(Bom.) 2844*. wherein this Court has considered the ratio in the case of *N. Balakrishnan Murthy Vs. M. Krishnamurthy* in paragraph No. 9 which read as under:-

“9. It is axiomatic that condonation of

delay is a matter of discretion of the court

Section 5 of the Limitation Act does not say

that such discretion can be exercised only if

the delay is within a certain limit. Length of

delay is no matter, acceptability of the

explanation is the only criterion. Sometimes

delay of the shortest range may be

uncondonable due to want of acceptable

explanation whereas in certain other cases

delay of very long range can be condoned as

the explanation thereof is satisfactory. Once

the court accepts the explanation as sufficient

it is the result of positive exercise of

discretion and normally the superior court

should not disturb such finding, much less in

reversional jurisdiction, unless the exercise of

discretion was on whole untenable grounds

or arbitrary or perverse. But it is a different

matter when the first cut refuses to condone

the delay. In such cases, the superior court

would be free to consider the cause shown

for the delay afresh and it is open to such

superior court to come to its own finding even untrammelled by the conclusion of the lower court.”

4. On the other hand, the learned counsel for the non-applicant submits that there is no sufficient cause or explanation given in the application. The impugned judgment was passed on 20.09.2017, whereas the present appeal was filed on 03.01.2019 along with an application condonation of delay. He submits that the department has woken up from deep sleep only when non-applicant has filed the suit for damages and malicious prosecution on 14.09.2018. In absence of explanation in the present application for condonation of delay, the prayer of the applicant cannot be accepted. So as to substantiate his contentions, he has relied on the latest judgment of the Supreme Court in case of ***Shivamma (dead) by Lrs. Vs. Karnataka Housing Board and others, 2025 SCC OnLine SC 1969***, wherein the Supreme Court in para 228 to 233 has observed that State cannot simultaneously seek to represent the interest of the public and yet consistently fail to protect that very interest by allowing limitation periods to lapse. The Supreme Court has also observed the liberal

inclination towards the State or any office instrumentalities in matters of condonation of delay, cannot be adopted, merely on the presumption that, if the delay is not condoned, public interest runs the risk of suffering, by a meritorious matter being thrown out. Public interest lies not in condoning governmental indifference, but in compelling efficiency, responsibility, and timely action.

5. Upon consideration of the rival submissions, admittedly, the impugned judgment was passed on 20.09.2017. Thereafter, on 28.09.2017, the applicant has applied for certified copy which was prepared on 04.10.2017 and the same was received by the applicant on 12.10.2017. Accordingly, the present application was filed for preferring the appeal on 03.01.2019. Admittedly, the non-applicant has filed suit for damages and malicious prosecution on 14.09.2018. Under such circumstances, it is necessary to see whether the applicant in his application has shown sufficient cause explaining the delay of 397 days.

6. Upon perusal of paragraph Nos. 3 and 4 reproduced above, absolutely, it does not show that the

applicant has explained the delay properly. The argument advanced by the learned counsel for the applicant that he may be permitted to file additional affidavit explaining the delay deserves no consideration for the reason that admittedly the application for condonation of delay was filed on 03.01.2019, now in the year 2025, it would not be proper to permit the applicant to file additional affidavit to explain sufficient cause which ought to have been explained by the applicant at the first instance itself. Six years have been lapsed and for all these years, the department has slept over the matter and kept it pending without explaining the delay and providing sufficient cause in the application for condonation of delay. As no sufficient cause is explained, even the department cannot be exonerated by giving benefit under Section 5 of the Limitation Act as it is a settled position of law, that all are treated equal before the law, be it private litigants or State litigant or department and any discrimination is impermissible in view of Article 14 of Constitution of India.

7. After considering the explanation tendered by the applicant in paragraph Nos. 3 and 4 of the application for condonation of delay, there are no details of further steps

taken by the department after the impugned judgment was delivered. Considering the observations of this Court as well as the Supreme Court in the judgments relied upon by the parties, one thing is clear that even, if the State or its instrumentalities are the litigants, inclination cannot be shown unless sufficient cause is shown. Admittedly, what has been observed above, in the facts of the present case, absolutely there is no explanation tendered or sufficient cause shown in the application for condonation of delay. After lapse of six years, the present applicant is requesting that he may be permitted to file additional affidavit explaining the delay. The same would create an opportunity for the department to come with a theory which will be by way of an after thought. The department working in public interest ought to take matters seriously as it affects the interest of the public at large. Filing of an application for condonation of delay by way of formality without explaining sufficient cause and the expectation of the State and its instrumentation to show liberal inclination, this practice needs to be deprecated. Allowing the filing of additional affidavit thereby explaining the delay in the present facts and circumstances of the case

would frustrate the very object and purpose with which the Limitation act was enacted particularly Section 5 of the Limitation Act. Further, already the condonation of delay application is filed to condone the delay of 397 days.

8. The observation of the Supreme Court in the case of Shivamma (*supra*) are relevant in the present case which states that the State has higher duty to act in time, for in every matter it litigates. Repeated indulgence in condoning delays on grounds of bureaucratic inefficiency would amount to eroding the very object of limitation statutes, which are enacted in every civilized jurisdiction for the sake of finality, certainty, and public order. Any other view would invariably defeat the sound public policy embodied in the Limitation Act and fail in enthusing efficiency in administration, and bring a balance between accountability and autonomy of action. Therefore, it is a settled position of law that unless and until explanation for condonation of delay is tendered and sufficient cause is shown which are cardinal principles of Section 5 of the Limitation Act, it would not be proper to condone the delay, otherwise the very object of incorporating Section 5 of the Limitation Act would fail in its objective.

9. Also, there is every possibility that it is only after filing of the suit by the non-applicant on 14.09.2018 i.e. suit for damages and malicious prosecution, the department has filed the application for condonation of delay with ulterior motive. The authorities have decided to prosecute the present non-applicant as he has filed the suit. This is nothing but a revengeful action on part of the department.

10. Considering the above discussion and the present facts and circumstances, the applicant has miserably failed to explain the delay and to give sufficient cause, therefore, the application needs to be rejected, hence the same is rejected.

(M. M. NERLIKAR, J.)