



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

WRIT PETITION NO.5898 OF 2022

PETITIONER
(Ori. Plaintiff)

: **Shri Roy Enterprises,**
Through its proprietor Shri
Narayanchandra K. Roy, Plot no.158,
Ramsumerbabanagar, Kawrapeth,
Nagpur.

..VERSUS..

RESPONDENT
(Ori. Defendant)

: **1. Shri Govind Engineering,**
Through its proprietor Govind
Yadavrao Roade, Plot. no.2, Amarnagar,
Nildoh, M.I.D.C., Hingna Road,
Nagpur.

Mr C. F. Bhagwani, Advocate for Petitioner.
Mr P. R. Bhure, Advocate for Respondent.

CORAM : **NANDESH S. DESHPANDE, J.**

RESERVED ON : **16th OCTOBER, 2025.**

PRONOUNCED ON : **3rd NOVEMBER, 2025.**

JUDGMENT

. **Rule.** Rule made returnable forthwith. Heard finally
with the consent of learned counsels appearing on behalf of the
parties.

2. This petition challenges the judgment and order dated
28.09.2021 passed in Misc. Civil Appeal No.158 of 2021 (New)

and Regular Civil Appeal No.208 of 2019 (Old) by the learned Ad-hoc District Judge - 4, Nagpur.

3. The facts in brief can be stated as under :

On 19.01.2016, a decree came to be passed by the 3rd Joint Civil Judge Junior Division, Nagpur, in R.C.S. No.122 of 2015. Pursuant to which, on 04.04.2016, an execution proceedings bearing R.D. No.1280 of 2016 came to be filed. The suit was decreed ex-parte and a money decree amounting to Rs.2,55,220/- was passed against the original defendant i.e. the respondent herein.

4. Being aggrieved by the same, the original defendant i.e. the respondent herein filed an application under the provisions of Order 9 Rule 13 of Civil Procedure Code for setting aside the said ex-parte judgment and decree. As the said application was filed beyond limitation, an application for condonation of delay was filed for setting aside ex-parte judgment and decree. As per the averments made in the said application, the delay of 636 days was caused due to miss-communication between the original defendant and his counsel. It was stated that even though, the respondent was

time and again enquiring with his counsel, there was no response from his counsel and the counsel could not meet him. The respondent further stated that the application for setting aside the ex-parte judgment and decree was filed only when the counsel was changed, which resulted in the delay. The petitioner who is the original plaintiff opposed the contentions made in the application and prayed for rejection of the same. Evidence on affidavit was filed by the respondent herein and he was cross-examined.

5. The learned Trial Court, after hearing the parties *vide* its judgment and order dated 05.03.2019, rejected the application for condonation of delay for setting aside ex-parte judgment and decree, thereby refusing to condone the delay. In an appeal, under the provisions of Order 43 Rule 1(d) of the Civil Procedure Code, the learned Appellate Court in Misc. Civil Appeal No.158 of 2021 (new) and Regular Civil Appeal No.208 of 2019 (old) *vide* impugned judgment dated 28.09.2021 was pleased to allow the appeal subject to costs of Rs.5,000/-. It is this judgment that is impugned in this petition by the original plaintiff on the grounds raised in the memo of petition.

6. I have heard Mr. C. F. Bhagwani, learned counsel appearing on behalf of the petitioner and Mr. P. R. Bhure, learned counsel for the respondent.

7. Mr. Bhagwani, learned counsel for the petitioner submits that the Appellate Court has gravely miss-understood the concept of condonation of delay. He fairly submits that even if a liberal approach is adopted while deciding the application for condonation of delay, it cannot mean that despite the applicant being negligent in prosecuting the cause, the delay can still be condoned. It is, therefore, his submission that the learned Trial Court was right in rejecting the application for condonation of delay.

8. Per contra, Mr. Bhure, learned counsel for the respondent supports the impugned judgment and order and states that the Appellate Court was right in allowing the application and a litigant could not be made to suffer solely due to the omission or inaction of the counsel.

9. In light of these facts, I have perused the record. I have also considered the submissions canvassed at the bar. As can be

seen from the application for condonation of delay, the only reason mentioned is that the same is solely due to the lack of communication between the original defendant and his counsel. It is a settled principle of law that even if day-to-day delay is not explained, however, it does not mean that the delay has to be condoned just for asking on vague and omnibus allegation. A bare perusal of the application for condonation of delay would reveal that there are no specific dates or occasions mentioned except for a sweeping averment that the defendant was not aware of the passing of the decree. Furthermore, if the cross-examination of the respondent is seen, he squarely admits that he was not aware when he had engaged the previous counsel. He even goes on to admit that he did not enquire about the court proceedings even after receipt of the warrant of attachment. The reasons sought to be canvassed in that application for condonation of delay have been completely falsified in the cross-examination.

10. While appreciating this material and more particularly the cross-examination on record, the learned Trial Court has observed thus :

“The cross examination is short, but revealing. Applicant has admitted that he got the summons of the suit. However, he did not appear in the court. He conceded that he did not personally make inquiry about the status of the suit by visiting the Court. He claimed ignorance about the contents of this affidavit. He has expressed inability to specify the dates on which he telephoned his counsel and tried to visit him. It is his admission that he never inquired about the matter to Mr. Nagpure by sending him a letter. His admission that Mr. Nagpure never told him that the dates would be informed to him later puts death knell to the allegations of negligence made by him against Mr. Nagpure.

Applicant, as said in the beginning, was expected to give sufficient cause for cause for not making application in time. Applicant, as his evidence reveals, never tried to inquire about the status of the matter by attending the Court. A party to the litigation engages counsel to conduct the matter. However, engagement of the counsel does not absolve the party from attending the Court. It is, in fact, the duty of me the party to attend the Court. Inability to attend the Court on certain occasions for sufficient cause can be considered. However, total absence from the proceeding is not expected. At the cost of repetition, the applicant in case at hand did not bother to attend the Court. Hence, negligence of the applicant is apparent. Gross negligence cannot be said to be a sufficient cause. Hence, the application sans merit. Point No.1 is answered accordingly.”

11. However, in an appeal, the Appellate Court by relying upon the observations of the Hon’ble Supreme Court in the case of *N. Balakrishnan vs. M. Krishnmurthy*, *AIR 1998 SC 3222*, went on to condone the delay. As I have already stated, in my view, the application for condonation of delay was firstly bereft of any

material particulars required to be pleaded, considering the inordinate length of delay, and furthermore, the said fragile pleadings were totally shattered by the cross-examination. The Appellate Court even if considered the cross-examination and the admissions contained therein has allowed the appeal only on a consideration that while deciding the application for condonation of delay, a liberal approach has to be adopted. True it is that a liberal and not a pedantic approach is needed while deciding the application for condonation of delay; that cannot be a tool for condoning the delay on the basis of omnibus and vague allegations, as is the case in the present matter, further compounded by the grave admissions in the cross-examination. In my view, therefore, the learned Trial Court was right in rejecting the application for condonation of delay.

12. Thus, in my opinion, as the learned Trial Court was correct in rejecting the application for condonation of delay, there is no need to comment upon the maintainability of the appeal. In that view of the matter, the writ petition needs be allowed and it is allowed accordingly. Hence, the following order is passed :

i) The judgment and order dated 28.09.2021 passed in Misc. Civil Appeal No.158 of 2021 (New) and Regular Civil Appeal No.208 of 2019 (Old) is quashed and set aside. Consequently, the judgment and order dated 05.03.2019 passed in MJC No.612 of 2017 by the 20th Joint Civil Judge Senior Division, Nagpur, rejecting the application for condonation of delay is restored.

ii) The application filed by the petitioner herein in MJC No.612 of 2017 seeking to condone the delay stands rejected.

iii) The writ petition is disposed of accordingly.

13. Interim order, if any, is vacated. Pending application(s), if any, stand(s) disposed of.

The rule is made absolute in above terms.

(NANDESH S. DESHPANDE, J.)