

MHRG170075952019



IN THE COURT OF DISTRICT COURT-1 PANVEL-RAIGAD,  
AT : PANVEL  
ORDER BELOW EXHIBIT NO.18 IN CIVIL APPEAL 626/2019  
(DATE 01/08/2024)

Bhau Vishnu Shelke and other  
Vs.  
Pundlik Kashinath Bhoir and other

1] Appellants have moved this application seeking delay condonation. It is submitted that, respondent No.5 and 11 are dead. Appellants were not aware about their death. Appellants after getting death certificate, came to know that, respondent No.5 had passed away on 12/09/2017, whereas respondent No.11 had passed on 04/12/2013. The delay to bring on record Lrs of respondent No.5, is of 5 years, 3 months and 2 days. The delay to bring on record Lrs of respondent No.11, is of 8 years, 9 months. Application is supported by affidavit.

2] Respondent No.1, 4, 6 to 10 and 12 to 14 filed their say at Exh.20 and opposed the application.

3] Heard Ld.Adv.for the appellant and opponent.

4] The application is for condonation of delay. Hon'ble Apex Court had laid down guidelines in various decisions and also the law with regard to section 5 of the Limitation Act. In

Isha Bhattacharjee Vs. Managing Committee of Raghunathpur Nafar Academy, Civil Appeal No.8183-8184 of 2023 decided on 13/09/2013, Hon'ble Apex Court laid down following guidelines.

“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.

To the aforesaid principles we may add some more guidelines taking note of the present day scenario. They are: -

- a) An application for condonation of delay should be drafted with careful concern and not in a half hazard manner harbouring the notion that the courts are required to condone delay on the bedrock of the principle that adjudication of a lis on merits is seminal to justice dispensation system.

- b) An application for condonation of delay should not be dealt with in a routine manner on the base of individual philosophy which is basically subjective.
- c) Though no precise formula can be laid down regard being had to the concept of judicial discretion, yet a conscious effort for achieving consistency and collegiality of the adjudicatory system should be made as that is the ultimate institutional motto.

d) The increasing tendency to perceive delay as a non- serious matter and, hence, lackadaisical propensity can be exhibited in a non-challant manner requires to be curbed, of course, within legal parameters”.

5] Now if the application Exh.20 is considered, then there is absolutely no whisper as to the cause for inordinate delay to bring the legal heirs of deceased respondent No.5 and 11 on record. It is only mentioned that, appellant tried to collect death certificate and after getting the death certificate appellant came to know the date of death of the deceased respondents. This pleading in the application clearly reflects the casual manner in which the application is drafted. When there is an inordinate delay, there has to be a sufficient cause to condone it. In the present application I find no reason, much less of sufficient nature, to condone the inordinate delay of 5 and 8 years.

6] Apart from the fact that, there is no sufficient cause made out, a negligence of the appellant is also reflected, as except affidavit, no documents are placed on record showing the actual date of death of deceased respondent Nos.5 and 11. The appellants have not even bothered to place on record the death certificates. This shows a negligence while seeking condonation of delay. For these reasons I am of the view that no case is made out to condone inordinate delay of 5 and 8 years, to bring on record legal heirs of deceased respondent Nos.5 and 11. With these observations I pass following order.

**ORDER**

Application Exh.18 is rejected with costs.

Panvel  
Date :-01/08/2024

( Jairaj D.Wadne )  
District Judge-1 Panvel-Raigad

I affirm that the contents of this P.D.F. file order are same, word to word, as per the original order.

Name of the stenographer : S.J.Sheth  
Name of the Court : Additional Sessions Judge,  
Panvel Raigad  
Dictation given on (direct) : 01/08/2024  
Order signed by the P.O.on : 01/08/2024  
Order uploaded on : 02/08/2024