

vinita

IN THE HIGH COURT OF BOMBAY AT GOA
CRIMINAL MISC. APPLICATION NO. 10 OF 2024
IN
CRIMINAL REVISION APPLICATION NO. 55 OF 2024-FILING

ARUN SHAHApplicant.
VS
PRASANNA SAMANT AND ANOTHERRespondents.

WITH
CRIMINAL MISC. APPLICATION NO. 12 OF 2024
IN
CRIMINAL REVISION APPLICATION NO. 5 OF 2024-FILING

ARUN SHAHApplicant.
VS
PRASANNA SAMANT AND ANOTHERRespondents.

WITH
CRIMINAL MISC. APPLICATION NO. 15 OF 2024
IN
CRIMINAL REVISION APPLICATION NO. 52 OF 2024-FILING

ARUN SHAHApplicant.
VS
PRASANNA SAMANT AND ANOTHERRespondents.

WITH
CRIMINAL MISC. APPLICATION NO. 16 OF 2024
IN
CRIMINAL REVISION APPLICATION NO. 47 OF 2024-FILING

ARUN SHAHApplicant.
VS
PRASANNA SAMANT AND ANOTHERRespondents.

WITH
CRIMINAL MISC. APPLICATION NO. 17 OF 2024
IN
CRIMINAL REVISION APPLICATION NO. 11 OF 2024-FILING

ARUN SHAHApplicant.
VS
PRASANNA SAMANT AND ANOTHERRespondents.
WITH
CRIMINAL MISC. APPLICATION NO. 18 OF 2024
IN
CRIMINAL REVISION APPLICATION NO. 17 OF 2024-FILING

ARUN SHAHApplicant.
VS
PRASANNA SAMANT AND ANOTHERRespondents.
WITH
CRIMINAL MISC. APPLICATION NO. 19 OF 2024
IN
CRIMINAL REVISION APPLICATION NO. 57 OF 2024-FILING

ARUN SHAHApplicant.
VS
PRASANNA SAMANT AND ANOTHERRespondents.
WITH
CRIMINAL MISC. APPLICATION NO. 20 OF 2024
IN
CRIMINAL REVISION APPLICATION NO.18 OF 2024-FILING

ARUN SHAHApplicant.
VS
PRASANNA SAMANT AND ANOTHERRespondents.
WITH
CRIMINAL MISC. APPLICATION NO. 21 OF 2024
IN
CRIMINAL REVISION APPLICATION NO. 62 OF 2024-FILING

ARUN SHAHApplicant.
VS
PRASANNA SAMANT AND ANOTHERRespondents.
WITH
CRIMINAL MISC. APPLICATION NO. 22 OF 2024
IN
CRIMINAL REVISION APPLICATION NO. 65 OF 2024-FILING

ARUN SHAHApplicant.
VS
PRASANNA SAMANT AND ANOTHERRespondents.

Mr R. Dessai, Ashay Priolkar and Ms Arya Parrikar, Advocate for the applicant.

Mr R. G. Ramani, Senior Advocate with Mr P. Kakodkar, Advocate for respondent no.1.

Mr G. Nagvekar, Addl. Public Prosecutor holding for Mr S. Karpe, Addl. Public Prosecutor for respondent no.2.

CORAM: BHARAT P. DESHPANDE, J

DATE: 26th February 2024

Oral order.:

1. Heard Mr R. Dessai, learned counsel for the applicant and Mr Ramani, learned Senior Counsel with Mr P. Kakodkar, learned counsel for the respondent.
2. Present application is for condonation of delay of 272 days in filing revision thereby challenging the order passed by Additional Sessions Court dated 20.3.2023 rejecting the application for production of additional documents in the Criminal Appeal.
3. Mr Dessai, learned counsel appearing for the applicant would submit that since the applicant was staying abroad he was not aware about the said order passed by the First Appellate Court. However, when he came to India in December 2023, he immediately filed revision along with application for condonation of delay.
4. Mr Dessai, would submit that there is no deliberate attempt on the part of the applicant for not filing the revision within time but the

grounds mentioned in the application are sufficient to condone the delay. Mr Dessai would submit that there was no proper communication between the applicant and his counsel appearing before the learned Sessions Court and accordingly, there is delay in filing the revision.

5. Mr Dessai would submit that Apex Court in the case of ***Esha Bhattacharjee Vs Managing Committee of Raghunathpur Nafar Academy and others***,¹ considered the aspect of sufficient cause and laid down parameters which are found in paragraphs no.21 and 22 of the said decision. He submits that delay is not intentional but because of lack of knowledge of the order passed by the First Appellate Court. Applicant while staying abroad was not knowing about the said order, thus according to him, grounds mentioned in the application for delay is sufficient for condoning the delay.

6. Mr Dessai placed reliance on ***Brihan Mumbai Electric Supply and Transport through its General Manager Vs BEST Jagrut Kamgar Sanghatana through Parivartan and others***² and also in the case of ***Collector, Land Acquisition, Anantnag and another Vs Mst. Katiji and others***³ would submit that sufficient cause is disclosed:-

7. Per contra, learned senior counsel Mr Ramani would submit

¹ (2013) 12 SCC 649

² Writ Petition No. 8045 of 2023 decided on 25.9.2023

³ (1987) 2 SCC 107

that first of all the application filed nowhere disclosed sufficient grounds. He submit that incorrect statements have been made which are prima facie showing that the applicant was very much knowing about the proceedings pending before the learned Sessions Judge and even he admitted through his advocate and made a statement about filing of the appeal. He submits that the applicant had knowledge of such order passed by the Sessions Court however, he was completely negligent in challenging the said order within the period of limitation. He submits that there are inconsistent statements made in the affidavit as well as in the above application. Mr Ramani has placed reliance on the following decisions:-

1. ***Basawaraj and another vs Special Land Acquisition Officer***⁴
2. ***Kumar and others Vs Karnataka Industrial Cooperative Bank Limited and another***⁵
3. ***Jayaram Meena Vs Suboor Khan***⁶
4. ***Pundalik Jalam Patil(dead) by LRS. Vs Executive Engineer, Jalgaon Medium Project and another***⁷

8. In the case of ***Basawaraj and another*** (supra), the Apex Court has observed in paragraph 11 and 12 as under:-

11 *The expression “sufficient cause” should be given a liberal interpretation to*

4 (2013) 14 SCC 81

5 (2013) 11 SCC 668

6 2023 SCC Online MP 1577

7 (2008) 17 SCC 448

ensure that substantial justice is done, but only so long as negligence, inaction or lack of bona fides cannot be imputed to the party concerned, whether or not sufficient cause has been furnished, can be decided on the facts of a particular case and no straitjacket formula is possible. (Vide Madanlal v. Shyamlal [(2002) 1 SCC 535 : AIR 2002 SC 100] and Ram Nath Sao v. Gobardhan Sao [(2002) 3 SCC 195 : AIR 2002 SC 1201] .)

- 12 *It is a settled legal proposition that law of limitation may harshly affect a particular party but it has to be applied with all its rigour when the statute so prescribes. The court has no power to extend the period of limitation on equitable grounds. “A result flowing from a statutory provision is never an evil. A court has no power to ignore that provision to relieve what it considers a distress resulting from its operation.” The statutory provision may cause hardship or inconvenience to a particular party but the court has no choice but to enforce it giving full effect to the same. The legal maxim *dura lex sed lex* which means “the law is hard but it is the law”, stands attracted in such a situation. It has consistently been held that, “inconvenience is not” a decisive*

factor to be considered while interpreting a statute.

9. In the case of ***Esha Bhattacharjee*** (supra) the Apex Court while considering the term “sufficient cause”, laid down parameters which are found in paragraphs 21 and 22 which read thus:-

21 *From the aforesaid authorities the principles that can broadly be culled out are:*

21.1 *(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.*

21.2 *(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.*

21.3 *(iii) Substantial justice being paramount and pivotal the technical considerations should not be given undue and uncalled for emphasis.*

21.4 *(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.

- 21.5 (v) *Lack of bona fides imputable to a party seeking condonation of delay is a significant and relevant fact.*
- 21.6 (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.*
- 21.7 (vii) *The concept of liberal approach has to encapsulate the conception of reasonableness and it cannot be allowed a totally unfettered free play.*
- 21.8 (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.*
- 21.9 (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.

21.10 (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.

21.11 (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.

21.12 (xii) The entire gamut of facts are to be carefully scrutinised and the approach should be based on the paradigm of judicial discretion which is founded on objective reasoning and not on individual perception.

21.13 (xiii) The State or a public body or an entity representing a collective cause should be given some acceptable latitude.

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

22.1 (a) An application for condonation of delay should be drafted with careful concern and not in a haphazard 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.

22.2 (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.

22.3 (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.

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

10. Keeping in mind above settled proposition of law, application and the reasons disclosed therein are required to be considered so as to find out whether there is sufficient cause disclosed by the applicant to exercise such discretion.

11. Applicant is challenging the impugned order dated 20.3.2023 by which learned Additional Sessions Judge rejected an application

for producing additional documents. Copies of roznama are placed on record which shows that in presence of the Advocate for the applicant, application at Exh. D-13 was dismissed with costs of Rs.1,000/-. Matter was then fixed for arguments. On the next date i.e. 17.4.2023, learned counsel for the applicant expressed his desire to withdraw his vakalatnama from the matter stating that he has issued NOC to the applicant for the purpose of engaging another advocate.

12. As per details placed on record by the applicant, it is clear that on 20.3.2023, the applicant was in UK. However, he arrived in India somewhere in April, 2023. This shows that the applicant was very much present in Goa in April 2023 but he left Goa on 6.5.2023. Roznama dated 5.5.2023 would clearly go to show that the same Advocate who was appearing for the applicant before the learned Additional Sessions Court appeared on behalf of the applicant. This shows that inspite of giving NOC, the same advocate appeared for the applicant. It again shows that there was some communication between the applicant and his advocate therefore he convinced his advocate to appear for him before the learned Additional Sessions Court.

13. Mr Ramani has rightly pointed out that on 14.7.2023 advocate for the applicant appeared before the learned Additional Sessions Court and made a statement that order dated 20.3.2023 is being

challenged before the High Court and on that ground he sought time. Thus it is clear that only on instructions of the applicant, an advocate appearing for him made a statement that order is being challenged before this Court. Similarly on 11.8.2023, roznama shows that advocate for the applicant again made a statement that said order is being challenged before the High Court and on that ground he requested for adjournment. Finally on 15.9.2023 a positive statement was made by Advocate for the applicant that an appeal has been filed against the order passed on 20.3.2023 below Exh.13. Learned Additional Sessions Court therefore requested advocate for the applicant to place on record copy of the stay application, if any, and adjourned the matter for arguments.

14. On the next date i.e. 11.10.2023 no such copy was placed on record. However, learned counsel for the applicant again sought time for arguments which was allowed subject to costs. All this time applicant was exempted from time to time from appearance. Only when further exemption application was filed on 30.10.2023, it was objected by the respondent and thereafter learned Additional Sessions Court dismissed the exemption application and issued non bailable warrant. Only thereafter matter was kept for final arguments. However, applicant claimed that he returned Goa somewhere on 13.12.2023 and stated that he was not knowing the stages of the Criminal Appeal pending before the learned Sessions

Court.

15. Mr Ramani was right in submitting that statement made on behalf of the present applicant on 14.7.2023 and 15.9.2023 regarding filing the appeal challenging the order dated 20.3.2023 was clearly as per the instructions of the applicant as Advocate on his own would not be able to State so.

16. The aspect that applicant was not knowing the stages of the matter pending before the Sessions Court cannot be a ground for condoning the delay since his earlier advocate appeared before the Additional Sessions Court from 5.5.2023 even though on the earlier date he issued notice for withdrawal of his vakalatnama, clearly goes to show that the same advocate was instructed by the applicant to appear for himself and accordingly, it is clear that the applicant was very well aware of the order passed on 20.3.2023. When a positive statement was made on 15.9.2023 which is recorded in the roznama of the learned Additional Sessions Court that an appeal has been filed, it presupposes that such statement was made only on the instructions of the applicant.

17. Thus application as well as affidavit filed by the applicant before this Court is inconsistent with the records of the trial Court. It is well settled that aspect of sufficient cause defer from case to case and it is the satisfaction of the Court while coming to the conclusion that reasons disclosed in the application are in fact sufficient to

condone the delay. It is no doubt true that there has to be presumed that delay is not deliberate. However, in the present matter record clearly demonstrate that the applicant was completely negligent and even though he was aware of the order passed on 20.3.2023, same was not challenged within time.

18. Such reasons could be fortified since there is no affidavit filed by the Advocate who appeared for the applicant before the learned Sessions Court, to support his contention that there was no communication or there was lack of communication between the applicant and his advocate.

19. Thus even the decision in the case of ***Esha Bhattacharjee*** (supra) will be against the contention of the applicant as far as conduct, behaviour and attitude of the applicant to its in action or negligence which in the present matter are relevant factors.

20. Even though Courts are liberal in condoning the delay, a case is required to be put forth to satisfy the Court with regards to the cause. Such cause if appears to be sufficient, then only discretion could be exercised. Parties cannot be allowed to take advantage of its own negligence, only to delay the matter. Contents of the application which was filed for condoning the delay is found to be inconsistent with records of the Appellate Court.

21. The main contention of the applicant was that there was major difficulty to take instructions or to seek advice from his advocate,

cannot be believed since the communication through electronic media including mobile phone is so easy nowadays when such instructions or advice could be obtained at any time. Thus, such ground as found mentioned in paragraph 4 of the application cannot be considered to be sufficient to condone the delay of 272 days in challenging the impugned order.

22. Even otherwise record clearly goes to show that the applicant was completely negligent in approaching this Court within time provided for filing of the revision. In the month of May 2023, the applicant was very much in Goa and could have considered or instructed his advocate for the purpose of filing of the revision. Application is clearly silent as to why the applicant failed to take instructions from his advocate during his stay in Goa. Accordingly, reasons disclosed in the application cannot be termed as sufficient cause for condonation of delay.

23. Applications for condonation of delay stand dismissed. Parties shall bear their own costs.

24. All Revision applications stand disposed of in view of rejection of the application for condonation of delay.

BHARAT P. DESHPANDE, J.