



Pradnya

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
REVIEW PETITION (ST) NO. 19950 OF 2022
IN
WRIT PETITION NO. 11997 OF 2016

1. THE STATE OF MAHARASHTRA
2. THE DISTRICT COLLECTOR &
REHABILITATION OFFICER, KOLHAPUR
3. THE LAND ACQUISITION OFFICER
No.12, KOLHAPUR,
having office at Swarajya Bhavan,
Collector Office, Nagala Park,
Kolhapur

...PETITIONERS
(ORIGINAL
RESPONDENTS)

~ VERSUS ~

1. RAJAGONDA BHIMGONDA PATIL
2. BHIMGONDA RAMGONDA PATIL,
Both – Adults, Occ. Agriculturists,
R/o – At & P – Uchagaon, Tal.
Karveer, Dist. Kolhapur

...RESPONDENTS
(ORIGINAL
PETITIONERS)

ALONG WITH
INTERIM APPLICATION NO. 13396 OF 2024
IN
REVIEW PETITION (ST) NO. 19950 OF 2022
IN
WRIT PETITION NO. 11997 OF 2016

NATHA SHAMRAO DESHMUKH
(KAMBLE),
Age 46 yrs., Occu. Agriculture
All R/at – Manere mala Shriram
Nagar Uchgaon, Kolhapur,

...APPLICANT/
INTERVENOR

~ IN THE MATTER BETWEEN ~

1. STATE OF MAHARASHTRA,
Through General Administration,
Department, Mantralaya, Mumbai
2. DISTRICT COLLECTOR AND
REHABILITATION OFFICER, KOLHAPUR
3. THE LAND ACQUISITION OFFICER-12
KOLHAPUR,
having its Office at Swarajya
Bhavan, Collector Office, Nagala
Park, Kohapur.

...PETITIONERS
(ORIGINAL
RESPONDENTS)

~ VERSUS ~

1. RAJGONDA BHIMGONDA PATIL,
Age. 75 yrs., Occ: Agri
R/at Uchagaon, Taluka Karveer,
District Kolhapur
2. BHIMGONDA RAMGONDA PATIL,
Through I/R Amor Patil
Age 34 yrs., Occ: Agri,
R/at Uchagaon Taluka Karveer,
District Kolhapur.

...RESPONDENTS

ALONG WITH
INTERIM APPLICATION NO. 1675 OF 2024
IN
REVIEW PETITION (ST) NO. 19950 OF 2022
IN

WRIT PETITION NO. 11997 OF 2016

WILLIAM ANTON D'SOUZA,
Age 53 yrs., Occu. Agriculture
All R/at-Dharan Grasta Vasahat,
Rukadi, tal. Hatkanagali,
District Kolhapur

**...APPLICANT/
INTERVENOR**

~ IN THE MATTER BETWEEN ~

- 1. STATE OF MAHARASHTRA,**
Through General Administration,
Department, Mantralaya, Mumbai
- 2. DISTRICT COLLECTOR AND
REHABILITATION OFFICER, KOLHAPUR.**
- 3. THE LAND ACQUISITION OFFICER-12
KOLHAPUR,**
having its Office at Swarajya
Bhavan, Collector Office, Nagala
Park, Kohapur.

**...PETITIONERS
(ORIGINAL
RESPONDENTS)**

~ VERSUS ~

- 1. RAJGONDA BHIMGONDA PATIL,**
Age. 75 yrs., Occ: Agri
R/at Uchagaon, Taluka Karveer,
District Kolhapur
- 2. BHIMGONDA RAMGONDA PATIL,**
Through I/R Amor Patil
Age 34 yrs., Occ: Agri,
R/at Uchagaon Taluka Karveer,
District Kolhapur.

...RESPONDENTS

**ALONG WITH
INTERIM APPLICATION NO. 1674 OF 2024**

IN
REVIEW PETITION (ST) NO. 19950 OF 2022
IN
WRIT PETITION NO. 11997 OF 2016

1. **RONNY JOCKY D'SOUZA,**
Age:36 years, Occ. Agriculture
R/o. Chaphodi, Tal. Radhanagri
Dist. Kolhapur
2. **STELLA JOHN D'SOUZA,**
Age 43 yrs., Occ : Housewife,
R/at. Chaphodi, Taluka
Radhanagari,
District Kolhapur.

...APPLICANTS/
INTERVENORS

~ IN THE MATTER BETWEEN ~

1. **THE STATE OF MAHARASHTRA,**
2. **THE DISTRICT COLLECTOR &
REHABILITATION OFFICER, KOLHAPUR**
3. **THE LAND ACQUISITION OFFICER
No.12, KOLHAPUR,**
having office at Swarajya Bhavan,
Collector Office, Nagala Park,
Kohapur.

...PETITIONERS
(ORIGINAL
RESPONDENTS)

~ VERSUS ~

1. **RAJAGONDA BHIMGONDA PATIL**
2. **BHIMGONDA RAMGONDA PATIL,**
Both – Adults, Occ. Agriculturists,
R/o – At & P – Uchagaon,
Tal. Karveer, Dist. Kolhapur.

...RESPONDENTS
(ORIGINAL
PETITIONERS)

ALONG WITH
INTERIM APPLICATION NO. 3426 OF 2023
IN
REVIEW PETITION (ST) NO. 19950 OF 2022
IN
WRIT PETITION NO. 11997 OF 2016

THE LAND ACQUISITION OFFICER
No.12, KOLHAPUR

...APPLICANT

~ IN THE MATTER BETWEEN ~

1. THE STATE OF MAHARASHTRA,
2. THE DISTRICT COLLECTOR &
REHABILITATION OFFICER, KOLHAPUR
3. THE LAND ACQUISITION OFFICER
No.12, KOLHAPUR,
having office at Swarajya Bhavan,
Collector Office, Nagala Park,
Kolhapur.

...PETITIONERS
(ORIGINAL
RESPONDENTS)

~ VERSUS ~

1. RAJAGONDA BHIMGONDA PATIL
2. BHIMGONDA RAMGONDA PATIL,
Both – Adults, Occ. Agriculturists,
R/o – At & P – Uchagaon,
Tal. Karveer, Dist. Kolhapur.

...RESPONDENTS
(ORIGINAL
PETITIONERS)

APPEARANCES

FOR THE PETITIONERS IN
WP/11997/2016 AND FOR THE

Mr Pandit Kasar.

RESPONDENTS IN RPWST/19950/2022

FOR THE RESPONDENT-STATE IN
RPWST/19950/2022

Mr Y D Patil, AGP.

CORAM : M.S.Sonak &
Kamal Khata, JJ.

RESERVED ON : 04 October 2024

PRONOUNCED ON : 14 October 2024

JUDGMENT (Per MS Sonak J):-

1. Heard learned counsel for the parties.
2. Review Petition (Stamp) No.19950 of 2022 seeks a review of the judgment and order dated 15 November 2017 in Writ Petition No.11997 of 2016. Interim Application No.3426 of 2023 seeks condonation of delay of 1679 days, i.e. 4 years and 7 months, in instituting the above Review Petition.
3. Interim Application No.13396 of 2024 in Review Petition (Stamp) No.19950 of 2022 is filed by one Natha Shamrao Deshmukh (Kamble) seeking intervention in the Review Petition.
4. Interim Application No.1675 of 2024 is instituted by one William Anton D'souza, again seeking intervention in the above Review Petition.
5. Interim Application No.1674 of 2024 is instituted by Mr Ronny Jocky D'souza and another, again seeking impleadment in the above Review Petition.

6. Until the delay of 1679 days, i.e. 4 years and 7 months in instituting the Review Petition by the State Government is condoned, there is no question of considering Review Petition (Stamp) No.19950 of 2022 and the other Interim Applications seeking intervention therein. Accordingly, it is proposed first to consider Interim Application No.3426 of 2023, by which the State seeks condonation of delay of 1679 days, i.e. 4 years and 7 months, in instituting Review Petition (Stamp) No.19950 of 2022.

7. The State's Application for condonation of delay firstly states that the order dated 15 November 2017, of which review is applied, was passed by this Court relying upon *Pune Municipal Corporation and Another Vs Harakchand Misirimal Solanki and Others*¹. The Application states that this decision was "overruled" by the Full Bench in *Indore Development Authority Vs Manoharlal and Others*² decided on 6 March 2020. Therefore, it is suggested that the delay of 1679 days, i.e. 4 years and 7 months in instituting the Review Petition, be condoned.

8. Secondly, the State's Application for condonation of delay refers to a Notification dated 23 June 2020 by which a direction was issued to all Government departments to file Review Petitions in cases where Petitions were allowed by following the decision in *Pune Municipal Corporation Vs Harakchand Solanki* (supra). The Application states that no Review Petition could be filed in 2020 due to the Covid-19

¹ (2014) 3 SCC 183

² (2020) 8 SCC 129

pandemic. There is a reference to heavy rainfall in August 2021 in Kolhapur District and the Deputy Collector being busy with disaster management issues.

9. The State's Application for condonation of delay urges the exclusion of the period between 15 March 2020 to 28 February 2022 by relying upon the orders of the Hon'ble Supreme Court extending the period of limitation on account of the Covid-19 pandemic.

10. Finally, paragraph 6 of the State's Application for condonation of delay of 1679 days, i.e. 4 years and 7 months, states, *"The delay has mainly caused due to involvement of different departments of the State namely, Land Acquisition Office, District Collector and Revenue and Forest Department. The delay in filing the Review Petition is caused due to administrative procedure of the State which cannot be dispensed with."*

11. Learned AGP argued that the issue of condonation of delay must be construed liberally when the State is seeking condonation. He submitted that the reasons in the Application seeking condonation of delay constitute sufficient cause, and, therefore, the delay may be condoned.

12. Learned counsel for the original Petitioners argued that no sufficient cause is shown to explain the inordinate delay of 1679 days, i.e. 4 years and 7 months. He submitted that the State cannot be given any special treatment, and the Application for condonation of delay, in this case, was filed very casually. He submitted that the State cannot get the

benefit of the orders made by the Hon'ble Supreme Court extending the period of limitation due to the COVID-19 pandemic because the judgment and order dated 15 November 2017 was made almost three years before the onset of the COVID-19 pandemic. They submitted that the Explanation hits the Review Petition to Order XLVII Rule 1 of Code of Civil Procedure, 1908 ("CPC") and subsequent overruling of *Pune Municipal Corporation Vs Harakchand Solanki* (supra) can never be a good ground for either condoning inordinate delay of 4 years and 7 months or for allowing the Review Petition.

13. On considering the State's Application for condonation of delay, we are satisfied that no sufficient cause has been shown to explain the inordinate delay of 1679 days, i.e. 4 years and 7 months, even by adopting a liberal approach that is usually adopted when considering applications for condonation of delay filed by the State Government.

14. Firstly, there is no explanation whatsoever for the delay between 15 December 2017 and 15 March 2020, which is the date from which the Hon'ble Supreme Court suspended the period of limitation for filing proceedings throughout the Country. In *Delhi Development Authority vs. Tejpal and Others*³, the Hon'ble Supreme Court has held that the extension of limitation orders made due to the Covid pandemic were intended to benefit vigilant litigants who were prevented due to the pandemic and the lockdown, from initiating proceedings within the period of limitation prescribed by

³ (2024) 7 SCC 433

general or special law. Further, the Hon'ble Supreme Court held that the appellants could avail themselves of the benefit of such orders *only in cases where the limitation period expired between 15 March 2020 and 28 February 2022*. In the present case, admittedly, the limitation period expired on 17 December 2017, almost three years before the Covid pandemic set in. Therefore, the State could not avail of any benefit from such orders.

15. In *Delhi Development Authority* (supra), the Hon'ble Supreme Court held that the applicants seeking condonation of delay must explain that they were diligent during the limitation period and could not file the appeal because of a sufficient cause arising within the prescribed period. However, in most cases, the prescribed limitation period had already expired long before the judgments in *Indore Development Authority vs. Shailendra (dead) and others*⁴ and *Indore Development Authority* (supra) were delivered. The appellants let the limitation period lapse, perhaps because they saw no case on merits for appeal. When the law was subsequently re-interpreted in the two cases above, the appellants approached the Hon'ble Supreme Court with the present appeals, petitions and applications. The Court held that such reasons do not constitute sufficient cause. In the present matter, the State's case is not significantly different.

16. In *Delhi Development Authority* (supra), the Hon'ble Supreme Court held that a party cannot take advantage of its deliberate inaction during the limitation period. Allowing to

⁴ (2018) 3 SCC 412

the contrary would distort incentives for parties and create dystopian consequences for the judicial process. Further, the Court held that if a subsequent change of law is allowed as a valid ground for condonation of delay, it would open a Pandora's box where all the cases that were subsequently overruled or the cases that had relied on the judgments that were subsequently overruled, would approach the Supreme Court and would seek a relief based on the new interpretation of law. There would be no finality to the proceedings, and every time the Supreme Court reached a different conclusion from its previous case, all such cases and those relying on it would be reopened.

17. The excuses in paragraph 4 of the Application cannot be accepted and do not constitute sufficient cause to explain this inordinate delay. Very casually, a reference is made to heavy rainfall in Kolhapur or the vacant Deputy Collector (Land Acquisition) post. The Application, in terms, states that the delay was caused by an "*administrative procedure of the State which cannot be dispensed with.*" Given the inordinate delay of 1679 days, i.e. 4 years and 7 months, in instituting the Review Petition, this is hardly any explanation.

18. Since the Applicant is a State, a liberal approach can be adopted when considering an Application for condonation of delay. However, frivolous excuses like those in the present case cannot constitute sufficient cause. The usual claims on account of impersonal machinery and inherited bureaucratic methodology of making file notings cannot be accepted given the modern technologies being used and available. The

limitation law binds everybody, including the Government. Based on such reasoning, the Hon'ble Supreme Court declined to condone the delay of 472 days by the State Government in instituting an Appeal in the case of *Postmaster General and Others Vs. Living Media India Limited and Another*⁵.

19. In *Esha Bhattacharjee Vs. Managing Committee of Raghunathpur Nafar Academy and Others*⁶, the Hon'ble Supreme Court explained that the concept of liberal approach has to encapsulate the conception of reasonableness and cannot be allowed a totally unfettered free play. The Court held that there is a distinction between inordinate delay and a delay of short duration or few days, for the former doctrine of prejudice is attracted. In contrast to the latter, it may not be attracted. The first warrants a strict approach, whereas the second calls for a liberal delineation.

20. In *Esha Bhattacharjee* (supra), the Hon'ble Supreme Court held that the State, a public body or an entity representing a collective cause should be given some acceptable latitude. But 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 law on merits is seminal to the justice dispensation system. Besides, an application for condoning delay should not be handled routinely based on individual philosophy, which is subjective. The Court held that the

⁵ (2012) 3 SCC 563

⁶ (2013) 12 SCC 649

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.” The Hon’ble Supreme Court set aside the High Court’s order condoning the delay of 2449 days.

21. In *Sheo Raj Singh (Deceased) Through LRs. & Ors. Vs. Union of India & Anr.*⁷, the Hon’ble Supreme Court advised the Courts to distinguish between an “explanation” and an “excuse”. An ‘explanation’ is designed to give someone all of the facts and lay out the cause for something. It helps clarify the circumstances of a particular event and allows the person to point out that something that has happened is not his fault if it is really not his fault. Care must, however, be taken to distinguish an ‘explanation’ from an ‘excuse’. Although people tend to see ‘explanation’ and ‘excuse’ as the same thing and struggle to find out the difference between the two, there is a distinction which, though fine, is real. An ‘excuse’ is often offered by a person to deny responsibility and consequences when under attack. It is sort of a defensive action. Calling something as just an ‘excuse’ would imply that the explanation proffered is believed not to be true. The Hon’ble Supreme Court lamented that it is only excuses, and not explanations, that are more often accepted for condonation of long delays to safeguard public interest from those hidden forces to sole agenda is to ensure that a meritorious claim does not reach the higher courts for adjudication.

⁷ 2023 LiveLaw (SC) 865

22. *In Balwant Singh (Dead) Vs. Jagdish Singh and Others*⁸, the Hon'ble Supreme Court explained that the expression "sufficient cause" embraces no more than that which provides a plentitude which, when done, suffices to accomplish the purpose intended in the light of existing circumstances and when viewed from the reasonable standard of practical and cautious men. The sufficient cause should be such that it would persuade the court, exercising its judicial discretion, to treat the delay as excusable. The party should show that besides acting bona fide, it had taken all possible steps within its power and control and had approached the court without any unnecessary delay. The test is whether or not a cause is sufficient to see whether the party could have avoided it by exercising due care and attention.

23. The Hon'ble Supreme Court held that even if the term "sufficient cause" has to receive liberal construction, it must squarely fall within the concept of reasonable time and proper conduct of the party concerned. The purpose of introducing liberal construction normally is to introduce the concept of "reasonableness" as it is understood in its general connotation. The law of limitation is a substantive law and has definite consequences on the right and obligation of a party to arise. These principles should be adhered to and applied appropriately depending on the facts and circumstances of a given case. Once a valuable right has accrued in favour of one party as a result of the failure of the other party to explain the delay by showing sufficient cause

⁸ (2010) 8 SCC 685

and its own conduct, it will be unreasonable to take away that right on the mere asking of the applicant, particularly when the delay is directly a result of negligence, default or inaction of that party. Justice must be done to both parties equally. Then alone, the ends of justice can be achieved. Suppose a party has been thoroughly negligent in implementing its rights and remedies. In that case, it will be equally unfair to deprive the other party of a valuable right that has accrued to it in law due to his vigilance.

24. Therefore, applying the above legal principles to the gross facts of the present case, we hold that the State shows no sufficient cause for condoning a delay of 1679 days, i.e. 4 years and 7 months in instituting this Review Petition. The Application for condonation of delay is, therefore, liable to be dismissed and is hereby dismissed.

25. However, without prejudice to the above, even assuming we were to exercise our discretion and condone the delay because the Applicant is an impersonal entity like the State. Still, in the facts of the present matter, we are satisfied that no case has been made to exercise our review jurisdiction.

26. In fact, from perusing the application for condonation of delay and the main review petition, we are satisfied that the State's case is squarely covered by Explanation to Order XLVII Rule 1 of CPC, which provides that the decision on a question of law on which the judgment of which review is sought is based has been reversed or modified by the subsequent

decision of a superior court in any other case, shall not be a ground for the review of such judgment.

27. As noted earlier, the Application for condonation of delay, the synopsis to the Review Petition and the Review Petition state that this Court's judgment and order dated 15 November 2017, for which the review is applied, was based on *Pune Municipal Corporation Vs Harakchand Solanki* (supra). However, in the case of *Indore Development Authority Vs Manoharlal* (supra) the Hon'ble Supreme Court has overruled *Pune Municipal Corporation Vs Harakchand Solanki* (supra) on 6 March 2020. The State Government, therefore, issued a Notification dated 23 June 2020 directing all State Government departments to file Review Petitions in cases where Petitions were allowed by following the decision in *Pune Municipal Corporation Vs Harakchand Solanki* (supra).

28. Thus, it is clear that the main ground for instituting this Review Petition is the subsequent overruling in *Indore Development Authority vs Manoharlal* (supra). Such a ground is expressly prohibited under the Explanation to Order XLVII Rule 1 of CPC. Therefore, the Review Petition would have to be dismissed even if we were to condone the inordinate delay of 1679 days, i.e. 4 years and 7 months, in instituting it.

29. In *Government of NCT of Delhi and another vs. K. L. Rathi Steels Limited and others*⁹, the Hon'ble Supreme Court held that the Explanation to Order XLVII Rule 1 of CPC provides that if the decision on a question of law on which the

⁹ (2024) 7 SCC 315

judgment of the Court is based is reversed or modified by the subsequent decision of the superior court in any other case, it shall not be a ground for the review of such judgment. Thus, even an erroneous decision cannot be a ground for the Court to undertake the review, as the first and foremost requirement of entertaining a Review Petition is that the order, review of which is sought, suffers from any error apparent on the face of the order and in the absence of any such error, the finality attached to the judgment/order cannot be disturbed.

30. In *K. L. Rathi Steels Limited* (supra), the Hon'ble Supreme Court also rejected the argument based on *Shailendra* (supra). In the said decision, *Harakchand Solanki* (supra) was declared as per incuriam and liberty was granted to file Review Petitions in matters disposed of relying upon *Harakchand Solanki* (supra). Still, the Hon'ble Supreme Court, overruling *Shailendra* (supra) held that if a judgment and/or order has attained finality because a judicial remedy is either not available in law or even if available, such remedy has been lost, it is not open for a higher court of law by a judicial fiat either to create a remedy for the party on the losing side to pursue or to grant liberty to him to pursue an otherwise available remedy-which by passage of time might have been lost-behind the back of a party who would obviously be seriously affected if he were compelled to contest the proceedings once again. Such an act of the Court would be without the authority of law.

31. In *K. L. Rathi Steels Limited* (supra), the Hon'ble Supreme Court also held that Order XLVII of CPC does not

authorise a review of a decree, which was right, on the happening of some subsequent event. With the introduction of the Explanation, there seems to be little room for serious debate on the point under consideration. Resultantly, the Court cannot permit what the statute prohibits. Thus, even if we were to condone the inordinate delay in instituting this Review Petition, it would still have to be dismissed on its merits.

32. Another ground which was faintly urged was that the compensation amount in Writ Petition No.11997 of 2016 was deposited in the Government account or in any event, the same was tendered to the Petitioners in the said Petition. Firstly, there is no clarity on this issue. Secondly, this position was never clearly projected. Thirdly, this is not some case of discovering new or essential matter or evidence that the State Government could not have discovered despite due diligence. Fourthly and most pertinently, a mere deposit in a separate bank account or even tendering of the amount was not accepted as sufficient to save the acquisition in the case of *Pune Municipal Corporation Vs Harakchand Solanki* (supra). Therefore, even based on this ground, which was faintly urged, no case for review is made out even if we condone the inordinate delay of 1679 days, i.e. 4 years and 7 months in instituting the Review Petition, no case is made out to allow the Review Petition.

33. The Interim Applications for Intervention are entirely misconceived. There is no question of the Applicants in the said Interim Applications seeking intervention in the Review

Petitions. If at all they have any grievance with the judgment and order dated 15 November 2017 and if they could be considered as “aggrieved persons” under the law as explained by the Hon’ble Supreme Court in *K. L. Rathi Steels Limited* (supra), it is for them to pursue their independent course and not seek intervention or impleadment in these Review Petitions. In any event, at least one of the proposed Intervenor instituted a separate Review Petition and was heard in it.

34. For all the above reasons, the Application for condonation of the 1679-day delay, i.e., 4 years and 7 months, in instituting the Review Petition, is dismissed. However, even assuming we were to condone this inordinate and unexplained delay, even on merits, the Review Petition was liable to be dismissed for the reasons we indicated in this order.

35. Accordingly, all the Interim Applications and, consequently, the Review Petition (Stamp) No.19950 of 2022 are hereby dismissed.

36. There shall be no order for costs.

(Kamal Khata, J)

(M. S. Sonak, J)