
(2014) 11 BOM CK 0008

In the Bombay High Court

Case No : Writ Petition Nos. 1374 and 1469 of 2014

Sangita C. Thakur

APPELLANT

Vs

Dnyansagar Education Society

RESPONDENT

Date of Decision : 27-11-2014

Acts Referred:

Limitation Act, 1963 — Section 5

Citation : (2015) 3 ALLMR 130 : (2014) 4 LLN 614

Hon'ble Judges : M.S. Sonak, J

Bench : Single Bench

Advocate : P.V. Thorat, Advocate for the Appellant; Sanjay More, Head Master and U.S. Upadhyay, AGP, Advocate for the Respondent

Judgement

M.S. Sonak, J.—Rule in both the petitions.

2. By order made on 30 October 2014, the parties were put to notice that these petitions will be disposed of finally at the stage of admission itself.

3. Both the petitions challenge the orders dated 9 October 2013 made by the School Tribunal, Mumbai in two separate miscellaneous applications lodged in two separate appeals preferred by the respective petitioners in both the petitions, declining to condone the delay in filing of appeals against termination orders made by respondent Nos.1 and 2 (School Management).

4. Mr. Sanjay More, Headmaster of Dnyansagar Education Society appears on behalf of respondent Nos.1 and 2. On 30 October 2014, as also on the previous occasion Mr. More, on behalf of respondent Nos.1 and 2, had applied for adjournments on the ground that respondent Nos.1 and 2 seek to engage services of an advocate to appear on their behalf. On both occasions adjournment was granted at the request of Mr. More. In order dated 30 October 2014, however, it was made clear that adjournment is granted as a last chance and that on the next occasion petitions will be disposed of finally at the stage of admission itself. Even today, however, Mr. More submits that though he has

repeatedly informed the School Management about the orders made by this Court, no advocate has been engaged and therefore, he is once again constrained to seek adjournment.

5. Considering the background narrated earlier, I am not inclined to grant any further time to the School Management. Accordingly, matters have been heard finally at the stage of admission itself.

6. Mr. More, Headmaster of Dnyansagar Education Society, was offered an opportunity to make his submission in the matter. However, he states that he would not like to make any submissions on the merits of the matter.

7. In Writ Petition No. 1374 of 2014, which arises out of Miscellaneous Application No. 5 of 2012, the delay involved in filing of the appeal was about 120 days, according to the petitioner. However, the School Tribunal has recorded the delay, in effect comes to about 157 days. The divergence is on account of the petitioner taking into consideration the representation made post the service of termination order and the School Tribunal treating the date of termination order as the date of the accrual of cause of action. Be that as it may, considering the explanation offered, nothing much would turn upon whether the delay is to be construed as 120 days or 157 days.

8. In order to explain delay, the petitioner has pointed out that after the service of termination order dated 8 September 2011, the petitioner made a representations dated 26 September 2011 and 13 October 2011 to the Deputy Director of Education complaining against the termination order. Thereafter the petitioner also made representations dated 24 November 2011 and 7 December 2011 to the Hon'ble Minister of School Education for redressal of her grievances. The petitioner has stated that she was hopeful of some redressal and therefore did not rush with the filing of appeal before the School Tribunal. Besides, in the meanwhile respondent No. 1 lodged a complaint against the petitioner with the Oshiwara Police Station and the petitioner was constrained to apply for anticipatory bail in order to secure her liberty. All these factors contributed to the delay in filing of the appeal.

9. In Writ Petition No. 1469 of 2014, which arises out of Miscellaneous Application No. 4 of 2012, the services of petitioner were terminated 30 September 2011. According to the petitioner the delay in filing the appeal is of 120 days, but according to the School Tribunal the delay would be 132 days. Again in the context of the explanation offered, the issue as to whether the delay is 120 or 132 days would not be very relevant.

10. The petitioner in Writ Petition No. 1469 of 2014, in her application seeking condonation of delay, has submitted that she too made several representation to the Deputy Director of Education including, inter alia, representations dated 17 October 2011 and 17 November 2011. Further in the month of November 2011, she handed in the case papers to her to her advocate for filing of the appeal and there was some delay at his end in preparation of appeal papers. In the

meanwhile, respondent No. 1 filed a complaint against the petitioner with the Oshiwara Police Station and the petitioner was required to obtain anticipatory bail in order to secure her liberty. All these factors contributed to delay in filing of the appeal.

11. The School Tribunal, in the impugned orders, the reasoning of which is virtually identical, has in the first place held that the delay in both the matters was 157 days and 132 days respectively and not 120 days only, as urged by the petitioners. On this basis, the School Tribunal has proceeded to hold that there is no explanation whatsoever insofar as the balance period is concerned. Further the School Tribunal has held against the petitioners for failure to explain what steps the petitioners took to file the appeals within the period of limitation.

12. In my judgment, the approach of the School Tribunal is undoubtedly pedantic. It is settled position in law that in matters of condonation of delay, the Courts and Tribunals should adopt a liberal approach. The length of delay is not invariably the crucial factor. The quality of explanation is really vital. There is never any presumption that delay has been caused deliberately or with some oblique intentions. In fact, the petitioners in the present case have gained absolutely nothing by delaying the lodging of appeals. Besides, this is not a case where the petitioners have been indolent or have been simply slept over their rights. The records would indicate that the petitioners have made representations against the termination orders to the Deputy Director and the Minister. The petitioners were thus agitating, quite actively the issue of their termination. The fact that the complaints were filed against the petitioners and the petitioners were required to obtain anticipatory bail, is also not an irrelevant factor, particularly since the complaints are said to have been filed by the School Management itself. Certainly, therefore, sufficient cause was made out to explain the delay.

13. Whether the delay was 157 days or 132 days as the Tribunal has found out or whether the delay was 120 days as per the contentions of the petitioners, is quite irrelevant in the context of explanation offered. Suffice to state that the explanation offered is certainly a plausible one and the same does not smack of any mala fides. In these circumstances, case was made out for condonation of delay.

14. Further, the Tribunal may not be right in insisting upon the petitioners" explaining what steps they had taken to file the appeal within the period of limitation. Normally, the applicant seeking condonation of delay for preferring an appeal beyond the period prescribed by the law of limitation, cannot be required to explain the antecedent delay. In case of Ramlal, Motilal and Chhotelal Vs. Rewa Coalfields Ltd., , the Supreme Court has held that the failure of appellant to account for his non diligence during the whole of the period of limitation prescribed for the appeal does not disqualify him from praying for condonation of delay under Section 5 of the Limitation Act. That was a case where the appellant did not file the appeal till the last day of limitation and as he fell ill on the last

day of limitation, he filed appeal thereafter asking for the delay to be excused. In this context, it was held that the appellant's want of diligence till the last day of limitation would not disqualify him from apply for the excusing of delay. It was however, emphasized that even after sufficient cause has been shown, a party is not entitled to the condonation of delay in question as a matter of right. The proof of a sufficient cause is a condition precedent for exercise of the discretionary jurisdiction vested in the Court. This aspect of the matter naturally introduces the consideration of all relevant facts and it is at this stage that diligence of the party or its bona fides may fall for consideration, but the scope of the enquiry while exercising the discretionary power after sufficient cause is shown would naturally be limited only to such facts as the Court may regard as relevant. It cannot justify an enquiry as to why the party was sitting idle during all the time available to it under the law prescribed in period of limitation.

15. Similarly, in case of Shrimant Jadhavrao Anandrao Pawar and Others Vs. Dilip Balvantrao Pawar and Another, , where delay of 14 days in filing the appeal was properly explained, but condonation was denied for failure to explain the steps taken by the appellants upto the expiry of limitation period, the Supreme Court interfered with the orders of the Additional District Judge and the High Court, by observing thus :

5. We have perused the order of the learned Additional District Judge dismissing the appeal on the ground of limitation as also the impugned order of the High Court. We are of the opinion that the approach of both the courts in the matter of condonation of delay has been erroneous. The impugned order of the High Court shows that the Court was influenced by the fact that the period from 7-12-1998 to 1-1-1999 had not been explained by the appellants. The High Court is on record to say that even if the period from 1-1-1999 to 13-1-1999 is treated to have been properly explained, the first appellate court committed no error in rejecting the appeal on the ground of delay because of the non-explanation of the delay between 7-12-1998 and 1-1-1999. The period between 7-12-1998 to 1-1-1999 fell well within the period of limitation prescribed for filing the appeal. The question of explaining that period did not arise. It is only the period of the those 14 days before the filing of the appeal which was required to be explained and proper explanation for that period has been given, which was supported by medical certificate, which in the facts and circumstances of this case, we see no reason to disbelieve. The learned Additional District Judge was, therefore, in error in rejecting the application for condonation of delay for the period 7-12-1998 to 1-1-1999, vide order dated 15-11-1999 and the High Court also fell in error in dismissing the revision petition.

(emphasis supplied)

16. From the aforesaid, it is clear that the Tribunal was not right in declining to condone the delay on the ground that the petitioners allegedly failed to explain the steps taken by them to file the appeals before expiry of limitation period. In any case, from the facts and circumstances of the present case, it is clear that

even before expiry of the period of limitation, the petitioners addressed representations complaining about their termination. There is nothing unreasonable in the petitioners expectation that their grievances might have been redressed by the authorities like Deputy Director of Education or for that matter Minister of Education. The question is really not as to whether such authorities have the jurisdiction to go into the question of termination of teachers. The question is really whether the expectation which the petitioners had regards redressal was entirely misplaced. In the present case, it cannot be said that the expectation was misplaced.

17. Therefore, considering cumulatively the aforesaid facts and circumstances, the petitioners have definitely made out a case for condonation of delay. The view taken by the School Tribunal is vitiated by errors apparent on face of record as well as adoption of a pedantic approach. In case of *N. Balakrishnan Vs. M. Krishnamurthy*, the Supreme Court has held that once the Court or Tribunal of the first instance accepts the explanation for the delay as sufficient, it is the result of positive exercise of discretion and normally the superior Court should not disturb such findings, unless the exercise of discretion was on wholly untenable grounds or arbitrary or perverse. But it is a different matter when Court or Tribunal of the first instance refuses to condone the delay. In such a case, 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 court or Tribunal of the first instance. The reason for such a different stance is that the primary function of the court is to adjudicate the dispute between the parties and to advance substantial justice. The time limit fixed for approaching the court in different situations is not because on the expiry of such time a bad cause would transform into a good cause. The object is to prevent parties for resorting to dilatory tactics and seeking remedies promptly. It must be remembered that in every case of delay, there may be some lapse on the part of the litigant concerned. That alone is not enough to turn down his plea and to shut the door against him. If the explanation does not smack of mala fides or it is not put forth as part of a dilatory strategy, the Court must show utmost consideration to the suitor.

18. As noted earlier, in the facts and circumstances of the present case, it cannot be said that explanation offered by the petitioners smacked of mala fides or had been put forth as a part of dilatory strategy. Therefore, unless it is established that the delay in filing the appeals is culpable or attributable to some oblique motives or mala fide intentions, a liberal approach should be adopted, so that the parties are not deprived of at least one opportunity to have their grievances redressed before the judicial forum especially created for the purpose.

19. In view of the aforesaid discussion, the impugned orders dated 9 October 2013 in both the petitions, are quashed and set aside. The petitioners applications for condonation of delay stand allowed. The School Tribunal shall decide the appeals on their own merits. Rule is accordingly made absolute to the

aforesaid extent in both the petitions. No order as to costs.