
(2021) 11 BOM CK 0097

In the Bombay High Court

Case No : Civil Application No.12645 Of 2014 In Review Application No.234 Of 2014 In Writ Petition No.921 Of 2012

Suresh S/O Devikisan Oza

APPELLANT

Vs

State Of Maharashtra And Others

RESPONDENT

Date of Decision : 23-11-2021

Acts Referred:

Limitation Act, 1963 — Section 4, 5, 12

Insolvency And Bankruptcy Code, 2016 — Section 61(2)

Citation : (2021) 11 BOM CK 0097

Hon'ble Judges : Ravindra V. Ghuge, J;S.G. Mehare, J

Bench : Division Bench

Advocate : R.N. Dhorde, V.R. Dhorde, M.A. Deshpande, V.S. Bedre, A.V. Hon, V.D. Sapkal, S.T. Chalikwar

Final Decision : Allowed

Judgement

S.G. Mehare, J

1. The present is an application to condone 591 days delay in preferring the application to review the judgment and order dated 7. 03.2013 passed by this High Court in W.P. No. 921/2012.

2. The new fact that the Final plot no.5 initially allotted to the applicant was included and was the part of the first variation of the Town planning scheme no.1 at Shrirampur, was discovered from his friend Shri Porwal in October 2014. He received the relevant document under the Right to Information Act from the Arbitrator. Then the applicant applied for copies of the document and relevant maps to the Arbitrator on 21.10.2014 under the Right to Information Act. However, he had not received those documents till filing the present application. The applicant approached the lawyer with the photocopies of those documents in the Diwali Vacations in October 2014.

3. After the dismissal of his W.P. No. 921/2012, the applicant had undergone the

heart operation on 13/14.04.2013 and was bedridden. The applicant's daughter had also suffered paralysis. Hence due to ailments and family problems, the applicant was not in contact with Mr. Porwal, who has filed a W.P. No. 5274/2012 for the same grievance. It is pending. The situation was beyond the control of the applicant. It is not deliberate. It is prayed to condone the delay in the interest of justice.

4. The learned Senior Counsel for the respondent/non-applicant Shri Sapkal, has strongly opposed the application. He referred to the order passed by the Hon'ble Apex Court in the Petition for Special Leave to Appeal (Civil) No. 28409/2013 dated 20.09.2013 and vehemently argued that the applicant's petition which was filed against the order of this Court, passed in W.P. No. 921/2012, dated 7.03.2013 was allowed to be withdrawn with liberty to approach the State Government for appropriate relief. However, the applicant approached this Court with a Review Petition. Hence, the application deserves to be dismissed. The delay is not satisfactorily explained.

Therefore, it is not liable to be condoned. To bolster his argument, he relied on National Spot Exchange Limited Vs. Anil Kohli, Resolution Professional for Dunar Foods Limited, 2021 SCC Online SC 716.

5. The learned Senior Counsel Shri Dhorde for the applicant would submit that the Arbitrator made the false statement in the original writ petition. Hence, it culminated in dismissal of his petition. Soon after knowing about the new facts and evidence in October 2014, the present application and Review Application was filed within a month. The substantial right of the applicant is involved in the petition. No one shall suffer for the wrongs committed by others.

6. The law is settled that the length of the delay is not material, but the reasons stated for the condonation of delay. In other words, for condonation of delay, the reasons adduced must be proper, convincing, and acceptable.

7. The Hon'ble Apex Court in the Landmark case of Collector Land Acquisition, Anantnag V Mst Katiji and Ors, 1987 AIR 1353, has pronounced that 'when substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay. Further, the law is also settled that a justice-oriented approach is necessary while deciding the application under section 5 of the Limitation Act. A liberal view must be taken in considering an explanation offered for the delay if reasonable cause is offered. Condonation of the delay is a matter of discretion of the Court. However, it must be recognized that discretion is the discretion of law and not the subjective discretion of the Judge.

8. In National Spot Exchange cited (supra), the appellant had preferred the appeal before the NCLT under Section 61 (2) of the IB Code. Under said Section, the appeal was required to be preferred within a period of 30 days. The proviso to the said Section further provides that the appellate Tribunal may allow the

appeal to be filed after the expiry of the said period of 30 days if it is satisfied that there was sufficient cause for not filing the appeal, but such period shall not exceed 15 days. Considering the provisions for preferring the appeal under the said Code, the law is laid down that the appellate Tribunal has no jurisdiction at all to condone the delay exceeding 15 days from the period of 30 days, as contemplated in Section 61(2) of the IB Code. Where the specific provisions for the appeal and the powers to condone the delay were specifically provided in the Act, the Tribunal/Court cannot travel beyond the limitations imposed. Where the legislature prescribes a particular limitation for appeal and determines the specific period of limitation and powers to condone the delay, the general provisions of Sections 4, 5, and 12 of the Limitation Act would not apply.

9. The Review Petition should be filed within 30 days. Since it is a general provision, the provisions of the Limitation Act would apply to the present petition. Considering the provisions of law applicable to the review petition before the High Court, the judgment of National Spot Exchange cited (*supra*) cannot assist the non-applicant.

10. We do not find substance in the objection that the Hon'ble Apex Court granted the permission to withdraw the Special Leave Petition with liberty to only approach the Government and this restrains the petitioner from approaching this Court for review of the judgment and order of this Court. The applicant approached this Court soon after getting the knowledge of the documents and new facts. We do not find that there is a deliberate delay in filing the present application. The applicant had sufficient reason not to approach the Court within the time prescribed for preferring the Review Application. There can be no bar in these circumstances, in filing a review petition.

11. For the above reasons, the application is allowed. The delay caused in preferring the Review Application is condoned. The Registry is directed to register the Review Petition.