IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

Civil Application No. 380 of 2015
In
Rejected Case No.70 of 1998
(First Appeal Stamp No.23807 of 1996)

Babaji s/o Mahadeo Rawool. .. **Applicant.**

Versus

Dhule Municipal Council, Dhule. .. **Respondent.**

Shri. Vinesh C. Solshe, Advocate, for applicant.

Shri. N.N. Desale, Advocate, for respondent No.1.

CORAM: T.V. NALAWADE, J.

DATE : 1st JULY 2015

ORDER:

1) The application is filed for condonation of delay of 6155 days caused in filing application for setting aside order of dismissal and for relief of restoration of the first appeal which is dismissed due to inaction on the part of the appellant. Both the sides are heard.

2) The office objections were not removed. From the office record office objections like (i) claim for court fees and jurisdiction not stated, (ii) claim for court fees and jurisdiction not stated on foot note, (iii) copy not served on caveator, (iv) spare copy of appeal memo not filed etc. were not removed. The record further shows that from time to time adjournment was granted for removal of the office objections and ultimately on 17-2-1998 the learned Additional Registrar refused the registration.

3) It appears that the appellant approached the District Court by filing an application for condonation of delay in the year 2011 and the said application came to be rejected on 12-11-2014. After 17-2-1998 as there was change in pecuniary jurisdiction of the District Court, the appellate Court, matter ought to have been transferred to the District Court. It appears that due to those reasons proceeding was filed in District Court. The District Court has considered the matter on merits and has refused to condone the delay.

4) Even if the reasons given by the District Court are ignored as the matter could have been restored by this Court it is not possible to allow the application. Submission made that the appellant had no information for all those days, at least till the date of filing of the proceeding in the District Court, is not acceptable. When registration was refused on 17-2-1998 the appellant approached the District Court in the year 2011 and when District Court rejected the application on 12-11-2014 present proceeding came to be filed on 5-1-2015. Thus, no diligence was shown even after making of the order by the District Court. The learned counsel for the applicant has placed reliance on the following reported cases :-

(i) **AIR 1981 SC 1400(1) (Rafiq v. Munshilal);**

(ii) **AIR 2010 SC 1159 (Ram Kumar Gupta v. Har Prasad).**

5) To ascertain as to whether there is some case to the appellant in the appeal this Court has gone through the judgment delivered by the trial Court. The suit is dismissed on many grounds which include limitation ground. No relevant record was available with plaintiff -

contractor. There was no extension given for completion of the work when the contract period fixed was of six months. All these and other points are decided against contractor, plaintiff. Nothing could be achieved by the appellant in the appeal after so many years. This Court holds that it is not a fit case to condone delay and restore the main matter. The application stands rejected.

Sd/-
(T.V. NALAWADE, J.)

rsl