

**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD**

CIVIL APPLICATION NO.1876 OF 2012 IN
SECOND APPEAL ST.NO.14668 OF 2011

Municipal Corporation,
Aurangabad, (Through
the Commissioner)

.. Applicant

Versus

Suresh s/o Premraj Mutha

.. Respondent

Mrs Manjusha A.Deshpande, Advocate for applicant
Mr S.R.Deshpande, Advocate for respondent

CORAM : N.W. SAMBRE, J.

DATE : 16th January 2015

PER COURT :

1. This is an application for condonation of delay moved by the appellant – original defendant.

2. The applicant/appellant, a statutory body has issued notice to the respondent for removal of illegal structure which was subject matter of R.C.S.No.864 of 2005 which came to be decreed by judgment and order dated 30th June 2006, upheld in R.C.A.No.237 of 2007 by judgment and decree dated 15th December 2009. As such, the appeal by the statutory body.

3. Mrs Deshpande, learned Counsel for the applicant - Municipal Corporation has invited my attention to the cause cited by the applicant in paragraph 2 of the application. She submits that the delay caused in preferring the second appeal i.e. of 462 days is unintentional and *bona fide*. According to applicant/appellant, the time consumed for taking administrative decision for filing of the second appeal, tagging of the case papers in another file are main reasons for causing delay. She submits that the condonation of delay will hardly cause any prejudice to the present respondent and as such, the delay be condoned in the interest of justice.

4. Mr Deshpande, learned Counsel for respondent has strenuously urged that the application filed by the present appellant – statutory body lacs *bona fides*. He submits that both the courts have concurrently held in favour of the respondent herein. According to him, no case is made out by the appellant to condone the delay.

5. In support of his contention, learned Counsel for respondent has relied upon judgment of this Court in the matter of **State of Maharashtra and ors. Vs. Vithu Kalya Govari and ors.**, reported in **2008 (6) Mh.L.J. 239** and another judgment of this Court in the matter of **Nandkishor Kanhyalal Agrawal Vs. Dhule Municipal Corporation and ors.**, reported in **2012 (1) Mh.L.J. 918** so as to canvass that no special treatment can be meted out to appellant/applicant as a statutory body.

According to him, applicant should have been more diligent. He submits that the delay, as is sought to be explained in the application, is not satisfactorily explained. According to him, the respondent – non applicant is litigating for more than a decade and merely for the reasons mentioned herein above, the delay should not be condoned.

6. Having regard to the rival contentions of the parties, it is noticed that the present respondent – non applicant filed a suit for perpetual injunction wherein he claimed that he is owner of plot CTS No.14503/1 to the extent of 6548 square meters. He further claimed that when he purchased the property, already there was a room constructed and the notice issued by the present applicant is *mala fide*.

7. The fact remains that there exist a decree in favour of the respondent – non applicant wherein the present applicant – appellant is restrained from demolishing the room existed on the said property.

8. While condoning the delay, this Court is not going into the merits of the matter, however, note is taken that there exist a decree in favour of the present non applicant. Even if there is decree, it cannot preclude this Court from considering the claim put forth by the applicant as regards condonation of delay. In my opinion, the applicant – statutory body has given sufficient cause in the application for the delay caused in preferring the second appeal. Though the proposition of law brought to the notice of this Court by learned Counsel for the respondent cannot be doubted,

however, it is not mandatory for a party like applicant to explain day to day delay. Once sufficient cause is brought on record and established, as is demonstrated in the present case, in my opinion, case for condonation of delay is made out. As such, the application for condonation of delay is allowed for the reasons stated therein, however, subject to payment of costs of Rs.5,000/-. The payment of costs to be deposited in this Court within a period of three weeks from today. The payment of costs is a condition precedent.

9. Failure to deposit the costs within the stipulated period will result in dismissal of the present application without reference to the Court.

10. The respondent – non applicant herein is permitted to withdraw the said amount of costs, deposited by the applicant – appellant.

(N.W. SAMBRE, J.)

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