

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

WRIT PETITION NO. 11 OF 2014

Sunil S/o Digambarrao Hundekar,
Age: 42 years, Occ. Service,
R/o S.T. Colony, Tuljapur,
Tq. Tuljapur, Dist. Osmanabad.

...PETITIONER
(Ori. respondent)

versus

The Chief Officers,
Municipal Council, Tuljapur,
Tq. Tuljapur, Dist. Osmanabad.

...RESPONDENT
(Ori. Applicant)

.....
Mr. A.S. Bayas, Advocate for Petitioners
Mr. K.K. Kulkarni, Advocate for respondent
.....

CORAM : SUNIL P. DESHMUKH, J.

DATED : 4th AUGUST, 2015

ORAL JUDGMENT :-

1. Rule. Rule made returnable forthwith. Heard learned counsel for parties finally, with consent.
2. The petitioner – original respondent is before this court against order dated 02-02-2013 passed in Miscellaneous Civil Application No. 212 of 2012 by the Principal District Judge, Osmanabad, whereunder delay about one year and two hundred forty days in filing appeal by present respondent is condoned by awarding costs of Rs. 500/- to the petitioner.
3. Learned counsel Mr. Bayas appearing for petitioner vehemently contends that the order impugned is non-speaking and without

reference to contentions on either side. He contends that, as a matter of fact, application for condonation of delay contains fallacious reasons. Despite resistance under a say, the order of the learned Judge depicts that the contentions raised in the application have gone unchallenged. He purported to submit that elections of Municipal Council, Tuljapur were held in December, 2011, whereas judgment and decree in the Regular Civil Suit No. 203 of 2005 is dated 08-04-2011 and further that change of hands can hardly be any reason for consuming time in filing appeal. He further relies on couple of reported judgments, namely, *(2013)4 SCC 52 (Amendu Kumar Ber and others Vs. The State of West Bengal)* and *2008(5) All MR 954 Pundlik Jalam Patil (D) by L.Rs. Vs. Executive Engineering Jalgaon Medium Project and another*. In respect of first, learned counsel purportedly relies on paragraph No. 11 of the judgment. Perusal of said paragraph would indicate that those observations are in peculiar facts of that case and hardly of any assistance in the present case. So far as second judgment is concerned, relying on paragraph No. 24 learned counsel for petitioner contends that the local authorities or Government do not deserve different treatment, save and except when there are allegations of fraud. In the present case, there are no such allegations. In such circumstances, no leniency ought to have been shown to the respondent. He, therefore, requests that petition be allowed.

4. Learned counsel Mr. Kulkarni appearing for respondent, however, contends that it may be that there is implied consideration of contentions on either side, since order has been passed after hearing the parties. He submits that it is a fact that elections were held in December, 2011, however, lot of time was consumed before it, in

preparation for the same. In the prevailing circumstances, he submits that delay is not at all intentional, for, the respondent or for that matter the officer concerned would not have gained anything by causing delay. He submits that reasons assigned in the application carry lot of substance and that the petitioner has not specifically denied the contention that there is death of advocate and other relevant aspects referred to in the application. He submits that taking into account the decision of the apex court reported in *AIR 1987 SC 353 Collector Land Acquisition Anantnag and another Vs. Mst. Kaiji and others*, although courts expect that every day's delay must be explained by the parties, at the same time courts have also to take into account that the authorities deserve certain amount of latitude. In the present case, having regard to the circumstances it cannot be said that there is inordinate delay.

5. Looking at order of appellate court may not ostensibly indicate considerations of any rival contentions, yet, the court presumably appears to have passed order looking at the relevant aspects involved in the matter albeit order is little scanty. The order is passed after hearing the parties. The discretion appears to have been exercised after having regard to all the facts and relevant considerations. In such a case, adopting a pedantic approach and remitting the matter for rehearing of the application would not serve ends of justice. Inconvenience being caused to the petitioner in such a case can be taken care of by enhancing costs already awarded.

6. Having regard to the circumstances involved, I deem it appropriate that amount of Rs. 9500/-, in addition to costs awarded by the appellate court be paid by the respondent to the petitioner. As such, aggregate costs of Rs. 10,000/- is awarded. The costs be deposited by the respondent in appellate court within four weeks from the date of receipt of writ of this order. Upon deposit of said amount petitioner would be entitled to withdraw said amount.

7. Writ Petition, as such, stands disposed of. Rule is made absolute accordingly. Needless to refer to that in case costs are not deposited within stipulated period this writ petition shall stand revived.

Sd/-

(SUNIL P. DESHMUKH, J.)

MTK
