

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 3183 OF 2003

Trimbak Yedu Sawant	..	Petitioner
VS.		
Jaisingh Yedu Sawant,		
since deceased, through L.Rs.		
Sou. Nanda Arun Shingte & Ors.	..	Respondents

Mr. Pandit Kasar with Ms. Pratibha Shelke for Petitioner.
Mr. V. V. Salunkhe for Respondent No. 1B to 1D.
Mr. D. S. Sawant for Respondent Nos. 2A to 2C.

CORAM : M. S. SONAK, J.
DATE: 24 APRIL 2015

P.C. :-

1] This petition challenges common order dated 13 June 2002 dismissing the petitioner's applications seeking condonation of delay in applying for restoration of Regular Civil Appeal Nos. 155 of 1993 and 156 of 1993, which came to be dismissed for default on 15 October 1999.

2] The delay in the present case is of about one year fourteen days. The reason for the delay is that the appeals were entrusted to the Advocate and since the petitioner was in service at Mumbai, his power of attorney Mr. Ramchandra Waghmale was pursuing the same. It is stated that there was some communication gap *inter se*

between the said Ramchandra Waghmale and the Advocate and further between Ramchandra Waghmale and the petitioner. As a result of the same, the petitioner acquired knowledge about the dismissal of the appeals for default at the later stage. Further, Ramchandra Waghmale also expired and this has also contributed to lack of information with regard to the precise status of the appeals. Upon acquiring knowledge of the dismissal of the appeals for default, applications came to be taken out seeking condonation of delay and restoration.

3] Mr. Salunkhe, the learned counsel for respondent nos. 1(B) to 1(D) defended the impugned order, by pointing out that discretion has been exercised by the learned District Judge in a proper and legal manner. Mr. Salunkhe pointed out that in this case, there was material on record which suggests that the petitioner was aware of the dismissal of the appeals for default and yet, without any explanation, the petitioner failed to take expedient steps for seeking restoration. He submitted that at this stage if the delay is condoned, prejudice will occasion the respondents.

4] By the impugned order, the learned District Judge has refused to accept the cause shown as sufficient, mainly because according to the learned District Judge sufficient details were not

furnished with regard to the nature of communication gap as also proof that Ramchandra Waghmale expired on 9 November 1998.

5] In my judgment, the approach of the learned District Judge, cannot in the facts and circumstances of the present case be said to be proper. Cause was furnished by the petitioner and it cannot be said that the same was in any sense *malafide*. There is record that Ramchandra Waghmale had indeed expired on 9 November 1998. There is also record that the petitioner was pursuing the matters through Ramchandra Waghmale and had placed reliance upon both Ramchandra Waghmale and the Advocate. In matters of condonation of delay, it is likely that there is some lapse on the part of the parties. However, that by itself, is not sufficient to decline the parties hearing on merits. The length of time, in all cases, is not the only relevant factor. Quality of explanation is what is required to be emphasised upon.

6] No doubt, by condoning the delay, some prejudice is bound to occasion the respondents. However, such prejudice, in the facts and circumstances of the present case, be always compensated by way of costs. Accordingly, the impugned order dated 13 June 2002 is set aside. The applications seeking condonation of delay for restoration of the civil appeals stand granted. This shall be subject

to the petitioner depositing in the District Court costs of Rs.8,000/- each in the two appeals within a period of four weeks from today. Once the costs are deposited, the respondents on pro rata basis, may be permitted to withdraw the same unconditionally. In case the costs are not paid within a period of four weeks from today, this petition be deemed to have been dismissed.

7] Rule is made absolute to the aforesaid extent. There shall be no order as to costs.

8] All parties to act on basis of an authenticated copy of this order.

(M. S. SONAK, J.)

Chandka