

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.9777 OF 2014  
WITH  
WITH PETITION NO.9436 OF 2014  
WITH  
WRIT PETITION NO.9786 OF 2014

Shri. Mangesh Shivaji Mane. ..Petitioner.  
vs.  
Shri. VilasYeshwant Desavale and ors. ..Respondents.

Mr. Surel Shah with Umesh Pawar for the Petitioner in all the Petitions.  
Mr.P.G.Sarda for Respondent Nos. 1 to 6 in all the petitions.

**CORAM : M.S. SONAK, J.**  
**DATE : 10 FEBRUARY, 2015**

**PC:**

Rule in all the three petitions. With the consent and request of the Counsel for the parties, Rule is made returnable forthwith.

2) As common issue of law and facts are raised in these matters, the same are disposed of by this common order.

3) The petitioner challenges the order dated 18 June 2014 made by the District Judge I, Islampur declining to condone the delay

of almost 3 years and 4-months in preferring appeals against the order dated 7 April 2008 made by the Joint Charity Commissioner. The Joint Charity Commissioner by order dated 7 April 2008 did not interfere with the order of the Assistant Charity Commissioner allowing change report in respect of Jijamata Education Society, a trust under the Bombay Public Trust Act, 1950 ("hereinafter referred to as the "Said Act").

4) Mr. Shah, learned Counsel for the petitioner submitted that at the time when the Assistant Charity Commissioner made order dated 13 September 2007 allowing the Change report for the terms between 1994 to 2005 the respondents had also allowed the change report in respect of the terms from 2005 to 2010. The same is numbered as Change Report No.1677/2007. Further, the petitioner had also for the same period allowed the Change Report No.587/2006 for the same period. Both the Change Reports are disposed of by orders dated 13 September 2007 and 7 September 2007. As against the same the petitioner had preferred appeals before the Joint Charity Commissioner which were allowed and the matters were remanded to the Assistant Charity Commissioner inter alia for finalization of the members list. In view of such remand order the petitioner did not deem it necessary to prefer any proceedings as against the order dated 7 April 2008 made by the Joint Charity Commissioner. At later stage, however, the remanded proceedings came to be decided against the petitioner, by

reliance upon the order dated 7 April 2008 made by the Joint Charity Commissioner. Therefore, the petitioner preferred writ petition before this Court which was eventually withdrawn with liberty to prefer appeal before the District Court. In the process, there is delay and for which there is sufficient cause made out.

5) Mr. Shah submitted that implication of not taking out proceedings as against the order dated 7 April 2008 made by the Joint Charity Commissioner was not realized by the petitioner. The petitioner proceeded on the basis that the order dated 7 April 2008 which in terms had held that the change reports were incorrectly allowed by the Assistant Charity Commissioner would be favorably considered. Only upon the order dated 7 April 2008 being used against the petitioner in the remand proceeding, that petitioner were advised of the necessity to take out proceedings against the order dated 7 April 2008. This was based upon the legal advice and at the highest the some error in Judgment on the part of the petitioner. The delay was well explained and for bonafide reason.

6) Mr. Sarda, learned Counsel for the respondents submitted that if the application seeking condonation of delay is perused then the same is bereft of any cause. The petitioner has merely stated is that he was wrongly advised in the matter and therefore, the delay. The

learned Counsel submitted that this hardly constitute the sufficient cause for explaining inordinate delay for 3 years and 4 months.

7) Having heard the Counsel for the parties and perused the record, in my view, there is cause shown for condonation of delay. Ultimately, it is be remembered that length of delay is not the sole factor. In fact, it is the quality of explanation that should deserve credence. Although the delay in the the present case does appear to be inordinate it cannot be said that no cause has been shown for the same.

8) In the preset case, the delay involved is in the matter of challenge to order dated 7 April 2008 made by the Joint Charity Commissioner by which Joint Charity Commissioner declined to interfere with the Change report allowed by the Assistant Charity Commissioner by order dated 13 September 2007. If the order dated 7 April 2008 is perused then the same would indicate that Joint Charity Commissioner has in fact accepted the contention of the petitioner that such report ought not to have been allowed by the Assistant Charity Commissioner. However, relying upon the decision of this Court in the case of Jagatnarayansingh Swaruypsingh Chithere and others vs. Swarupsingh Education Society and another 1980 Mh.L.J. 372 the Joint Commissioner proceeded to hold that since the term in respect of

which the change reports were applied for have already come to an end, the issues raised are merely academic and the same need not be gone into. On this basis, the Joint Charity Commissioner observed that the trustees during the said period may be regarded as “de-facto” trustees.

9) In view of the aforesaid circumstances, it is quite reasonable that the petitioner was under bona fide impression that the order dated 7 April 2008 may not come in his way in the matter of fresh decision by the Assistant Charity Commissioner pursuant to remand by the Joint Charity Commissioner in the proceedings instituted by both petitioner as well as respondents i.e. Appeal Nos. 66 of 2007 and and 70 of 2007. However, upon remand since the order dated 7 April 2008 has made use of against the petitioner, the petitioner was advised to take up proceedings as against the same. The petitioner later preferred writ petition in this Court which was thereafter withdrawn and the petitioners then instituted appeals before the District Court. This is what occasioned the delay. The explanation furnished for the delay is satisfactory. Accordingly, there was no reason for the District Judge not to accept the same.

10) In the case of **N. Balakrishnan vs. M. Krishnamurthy (1998) 7 SCC 123**, the Hon'ble Supreme Court has laid down that

Condonation of delay is a matter of discretion of the court. Section 5 of the Limitation Act does not say that such discretion can be exercised only if the delay is within a certain limit. Length of delay is no matter, acceptability of the explanation is the only criterion. Sometimes delay of the shortest range may be uncondonable due to want of acceptable explanation whereas in certain other cases, delay of a very long range can be condoned as the explanation thereof is satisfactory. In every case of delay, there can be some lapse on the part of the litigant concerned. That alone is not enough to turn down his plea and to shut the door against him. If the explanation does not smack of mala fides or it is not put forth as part of a dilatory strategy, the court must show utmost consideration to the suitor. But when there is reasonable ground to think that the delay was occasioned by the party deliberately to gain time, the court should lean against acceptance of the explanation. A court knows that refusal to condone delay would result in foreclosing a suitor from putting forth his cause. There is no presumption that delay in approaching the court is always deliberate. The words "sufficient cause" under Section 5 of the Limitation Act should receive a liberal construction so as to advance substantial justice. Once the court accepts the explanation as sufficient, it is the result of positive exercise of discretion and normally the superior court should not disturb such finding, much less in revisional jurisdiction, unless the exercise of discretion was on wholly untenable grounds or arbitrary or perverse.

But it is different matter when the first court refuses to condone the delay. In such cases, the Superior court would be free to consider the cause shown for the delay afresh and it is open to such superior court to come to its own finding even untrammelled by the conclusion of the lower court. However, while condoning the delay, the court should not forget the opposite party altogether, It is be borne in mind that he is a loser and he too would have incurred quite large litigation expenses. It would be a salutary guideline that when courts condone the delay due to laches on the part of the applicant, the court shall compensate the opposite party for his loss.

11) Applying the aforesaid principle, the petitioner has made out a case for condonation of delay. However, the same should be subject to the petitioner paying costs. Mr. Shah, learned counsel for the petitioner, on instructions, submits that the petitioner is ready to pay costs of Rs.50,000/- (Rs. Fifty Thousand) to the School, which is operated by the Trust under the name of Jijamata Education Society, within a period of eight weeks from today.

12) Accordingly, the petitioner to pay to the school an amount of Rs.50,000/- and file receipt along with affidavit before the District Court within eight weeks from today. Upon the same, the District Court

restore the appeals instituted by the petitioner/petitioners and thereafter decide the same on merits in accordance with law. The District Court to endeavor to dispose of the appeals as expeditiously as possible and in any case within a period of one year from the receipt of the order. In case the amount as aforesaid is not paid within a period of eight weeks and necessary affidavit /receipt is not filed, then impugned order in these petitions shall be deemed to be confirmed without any further notice to this Court.

13) Rule is made absolute in the aforesaid extent. There shall be no order as to costs.

14) All the petitions are disposed of.

**(M.S. SONAK, J.)**