

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

CIVIL APPLICATION (CAO) NO. 1364 OF 2013
IN
MISC. CIVIL APPLICATION ST. NO. 18539 OF 2012
IN
WRIT PETITION NO. 1818 OF 1994 (D)

(Raisaheb Rekchand Mohta Spinning & Weaving Mills Ltd. Vs. The Municipal Council, Hinganghat & another)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri K. H. Deshpande, Senior Counsel With Shri M. M.
Agnihotri, Advocate for the applicant.
Shri F. T. Mirza, Advocate for respondent No.1.

**CORAM : B. P. DHARMADHIKARI
& S. B. SHUKRE, JJ.
DATED : 18 MARCH, 2015**

The prayer is to condone delay of 348 days in filing M.C.A. St. No.18539 of 2012, wherein review of judgment dated 19/10/2011 is sought. Reason for review appears to be alleged inconsistent observation in the order.

The contention of delay is strongly opposed by respondent No.1-Municipal Council.

Learned Counsel appearing for respondent No.1 has invited our attention to the relevant dates given in paragraph-2 of its reply filed to oppose the application for condonation of delay. It is submitted that after the judgment of this Court dated 19/10/2011, the present applicant approached the Hon'ble Apex Court and thereafter chose to withdraw those proceedings for filing an application before this Court. Our attention is invited to the orders of Hon'ble Apex Court dated 16/3/2012. It is submitted that having

withdrawn the Special Leave Petition with express purpose of filing M.C.A. before this Court, M.C.A. was not filed till 01/11/2012.

The Municipal Council did not take any immediate action because of withdrawal of the S.L.P. and desire to file application before this Court as expressed by the applicant. Almost after seven months it has issued a bill of demand. That demand came to be questioned in Writ Petition No. 5146 of 2012 on 22/10/2012. Another Writ Petition No. 5228 of 2012 came to be filed on 29/10/2012 challenging the notice of demand dated 25/11/2011. In both these petitions the applicant prayed for implementation of judgment dated 19/10/2011. The applicant secured favourable orders in those writ petitions and thereafter present application has been filed.

Shri Mirza, learned Counsel contends that the delay in filing civil application from 16/3/2012 till 22/10/2012 has not been explained at all.

In reply, the applicant submitted that respondent No.2, who happens to be an agent for collection of octroi, appointed by respondent No.1-Municipal Council itself had filed an application in disposed of Writ Petition No. 1818 of 1994 seeking appropriate orders and that application was disposed of on 02/3/2012 by this Court. Because of prevailing confusion as the judgment dated 19/10/2011 could have been given dual meaning, the applicant waited for response from respondent No.1 and after receipt of bill of demand on 03/10/2012, writ petitions came to be filed before this

Court.

The facts show that according to the review application, judgment of this Court dated 19/10/2011 can be interpreted in two ways. We are not concerned with the correctness of this submission, at this stage. However, the facts show that on 16/3/2012 Special Leave Petition was allowed to be withdrawn on the statement made by the present petitioners to move an application for clarification of final direction contained in paragraph 24 of the judgment. Hon'ble Apex Court has also briefly mentioned the alleged contradiction in sub paras (I) and (ii) to which attention was invited by the learned Counsel. Hon'ble Apex Court has also observed that as and when such an application is filed, it would be considered on its own merits.

In this situation, the review-applicant has on 22/10/2012 and 29/10/2012 filed two writ petitions before this Court and obtained interim orders therein.

As such, we do not find that delay has not been explained. All these facts find mention in the application for condonation of delay which is supported by proper affidavit.

As such, in the interest of justice, we condone the delay.

Office to register the misc. civil application and list it for further consideration along with Writ Petition Nos .5146 of 2012 and 5228 of 2012.

The application stands disposed of accordingly.