

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

WRIT PETITION NO. 1690 OF 2016

Pandurang s/o Gangadhar Medewar
Age: 71 years Occ: Pensioner
R/at: Shivram Nagar
Parbhani, Tal. & Dist. Parbhani ... PETITIONER

Versus

Parbhani City Municipal Corporation
Parbhani, through its
Municipal Commissioner ... RESPONDENT

.....
Mr. V. R. Bhumkar, Advocate for petitioner
Mr. S. S. Bora, Advocate for respondent
.....

CORAM : SUNIL P. DESHMUKH, J.

DATE : 6th MAY, 2016

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith and heard finally with consent of learned advocates for the parties.
2. Petition has been moved against an order refusing to condone delay of about 12 days in filing application for

restoration of suit, which had been dismissed in default on 13th January, 2015.

3. Petitioner contends that the reasons which have overwhelmed learned Joint Civil Judge, Senior Division, Parbhani while passing order dated 23rd October, 2015 on Exhibit-1 in Miscellaneous Application No. 100 of 2015 refusing to condone the delay, are rather incompatible with the general approach in delay condonation matters. According to him, it has emerged on record that the facts have not been disputed. Learned judge has considered the matter too technically, when, in fact, the application ought to have been approached openly with a view to further the cause of justice for which litigation had been initiated.

4. Mr. Bora, learned counsel for the respondent submits that overall position emerges that the matter has not been diligently handled by the petitioner and conduct of petitioner exhibits casual approach in the matter. Learned judge, under the circumstances, had been constrained to pass the order.

5. Perusal of the impugned order shows, although the petitioner contends to have got knowledge about dismissal order of January, 2015 immediately, had applied for certified

copies of the order, which were received and for quite a few days he was lying indisposed in February, 2015. According to him, it consumed quite some time. In the process delay of twelve days occurred in filing application for restoration of suit dismissed in default. These contentions and/or averments in the present matter have gone uncontroverted. In the circumstances, instead of looking at the matter parochially under which application came to be dismissed under impugned order, a little liberal approach may meet out the situation suitably.

6. The situation can be salvaged by putting certain condition on the petitioner to condone the delay of 12 days which in the circumstances appears to have been reasonably explained. However, inconvenience caused in the process may be taken case of by imposing some cost on the petitioner.

7. In view of aforesaid, writ petition is allowed in terms of prayer clause (C) subject to condition that the petitioner shall deposit a sum of Rs. 1,000/- in the trial court within a period of eight weeks, payable to the respondent. Rule is made absolute accordingly.

8. Having regard to the subject matter involved, it would be expedient that the suit would be proceeded with expeditiously.

9. Writ petition stands disposed of.

(SUNIL P. DESHMUKH, J.)

sms