

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

WRIT PETITION NO. 5957 OF 2016

Cane Agro Energy India Ltd.
Raygaon Post Hingangaon (Bk.)
Tq. Kadegaon, Dist. Sangli
Through its Authorized Signatory
Shri. Santosh Dhondiram Suryawanshi
Age: 40 years, Occu: Service,
R/o. As above

**....Petitioner
(Orig.Defts. No.1)**

Versus

- 1] M/s. Crystal Engineers,
Registered Partnership Firm
Through and for Partners

Shri. Satish S/o Pandharinath Bhagat
Age: 52 yrs, Occu: Business,

Sow. Shubhada Ravindra Bhagat
Age: 43 years, Occu: Business,

Both R/o. Plot No. A-106,
M.I.D.C. Shrirampur, Tq. Shrirampur
Dist. Ahmednagar.

Through their G.P.A. Holder

Shri. Pravin Vilasrao Ghogare
Age: 41 years, Occu: Service,
R/o. Suryanagar, Ward No. 7,
Shrirampur, Dist. Ahmednagar

...Orig. Plaintiffs

- 2] Shri. Pruthviraj Sayajirao Deshmukh
Age: Major, Occu: Business & Agriculture,
- 3] Shri. Dattatraya Dadu Suryawanshi
Age: Major, Occu: Business & Agriculture
- 4] Shri. Shankarrao Anant Patil
Age: Major, Occu: Business & Agriculture

- 5] Shri. Bhanudas Daji Shinde
Age: Major, Occu: Business & Agriculture
- 6] Shri. Ramchandra Dadasaheb Gharge
Age: Major, Occu: Business & Agriculture
- 7] Shri. Laxman Jaysing Kanse
Age: Major, Occ. Business & Agriculture

Respondents No. 2 to 7 are
R/o. Raygaon, Post Hngangaon (Bk.)
Tq. Kadegaon, Dist. Sangli.

[Respondents Nos. 2 to 7 are
deleted as per leave granted
by Hon'ble Court Dt.13-6-2016].

...Respondents

Mr. D.G. Nagode, Advocate for Petitioners.

Mr. S.S. Gangakhedkar, Advocate for Respondent No.1.

CORAM : T.V. NALAWADE, J.

DATED : 15th December, 2016.

ORAL JUDGMENT :

1) Rule. Rule made returnable forthwith. By consent, heard both the sides for final disposal.

2) Present proceeding is filed to challenge the order made on delay condonation application which was filed for condonation of delay caused in filing written statement. When written statement was to be filed within 60 days from 12.12.2015 but even no application was filed on 11.2.2015, on date fixed for filing written statement. On 10.3.2016 also there was no application filed for seeking further time. Submission was

made that on that day, the Presiding Officer was on leave. But, this circumstance cannot be considered as the charge of the Court is always kept with other Presiding Officer. It appears that application came to be filed on 23.3.2016 and it was contended that there was delay of 12 days caused in filing written statement. The Trial Court has rejected the application by observing that no due diligence was shown and it was not possible to use discretion given to the Court.

3) The suit is filed for recovery of amount of Rs. 88.62 lakh. It is in respect of work executed. In view of nature of suit, this Court holds that opportunity needs to be given to defendant to take decision on merits. However, the possibility that present petitioner is trying to protract the decision also cannot be ruled out. The respondent, plaintiff is required to spend on the present proceeding and he is required to come from Shrirampur, District Ahmednagar. In view of these circumstances, this Court holds that condition can be put on present petitioner to pay Rs. 25,000/- as costs to the respondent, plaintiff. The amount is to be deposited in the Trial Court on or before 4.1.2017. If the amount is not deposited in the Trial Court on or before the aforesaid date, it is to be presumed that the present proceeding is dismissed. If the amount is deposited, it is to be presumed

that 'No W.S. order' is set aside and delay is condoned and permission is granted to file the written statement. Petition is allowed accordingly.

Rule is made absolute in aforesaid terms.

[T.V. NALAWADE, J.]

SSC/