

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**BENCH AT AURANGABAD****WRIT PETITION NO. 9444 OF 2015**

THE STATE OF MAHARASHTRA AND OTHERS
VERSUS
BHARAT MALHARI KHAIRE

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AGP for Petitioners : Mr. A.V. Deshmukh

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CORAM : P.R. BORA, J.
Dated: January 13, 2016

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PER COURT :-

The order dated 29.04.2015 passed by the learned Adhoc District Judge-3, Ahmednagar in Civil Misc. Application No. 126/2012 is questioned in the present Petition.

2. The petitioners had filed the aforesaid Civil Misc. Application before the District Court, Ahmednagar seeking condonation of delay occasioned in filing the first appeal against the judgment and order dated 24.07.2007 in Special Civil Suit No.30/2015 decided by the Civil Judge, Senior Division, Shrigonda.

3. The delay of 1399 days was sought to be

condoned vide said application. The application was strongly opposed by the original plaintiff. The learned First Appellate Court, after considering the submissions made on behalf of the parties, rejected the said application. Aggrieved thereby, the State has filed the present Petition.

4. Shri. Deshmukh, the learned A.G.P. submitted that, the learned First Appellate Court has failed in properly appreciating contentions raised on behalf of the petitioner – State. The learned A.G.P. placing his reliance on the judgment of the Hon'ble Apex Court in the case of **N. Balakrishnan V/s M. Krishnamurthy (1998 AIR (SC) 3222)** submitted that, in the aforesaid matter, the Hon'ble Apex Court has condoned the delay of 883 days. The learned A.G.P. further submitted that, the petitioner – State needs to be given an opportunity to contest the matter on merits. He, therefore, prayed for setting aside the impugned order.

5. I have gone through the application submitted before the First Appellate Court seeking condonation of delay as well as the order passed below the said application,

which has been impugned in the present Petition. The following reasons were stated by the petitioner to justify the delay, which has occasioned for filing the appeal.

(i) That the proposal was forwarded to the Department of Law and Judiciary seeking approval for filing such appeal.

(ii) After making arrangement of court fees, the appeal was preferred.

6. The material on record shows that, one Sunil Anandrao Bansode, working as Naib Tahsildar, Karjat, at the relevant time, was examined by the petitioner in order to substantiate the contentions raised for condonation of delay. In his evidence, except stating that, the proposal was forwarded to the Department of Law and Judiciary and after making an arrangement for the court fees appeal has been preferred, nothing more has been stated by him. It is significant to note that, the said witness in his cross-examination has candidly admitted that, the delay was caused due to negligence on the part of the Officers in the Department. In view of the fact that, the State had failed in

brining on record the cogent and sufficient reason for occurrence of delay in filing the appeal, it does not appear to me that, the learned First Appellate Court has committed any error in rejecting the application. The decision on which the reliance has been placed by the learned A.G.P. cannot be of any help to the petitioner for the reason that, the facts in the case before the Supreme Court were quite different than are in the present case. The Writ Petition is devoid of any substance. Hence the following order :-

ORDER

The Writ Petition is rejected.

(**P.R. BORA, J.**)

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