IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CIVIL APPLICATION NO. 4377 OF 2014
IN
CIVIL APPLICATION STAMP NO.33676 of 2013
IN
WP/381/1989

THE SUPERINTENDING ENGINEER, NANDED IRRIGATION CIRCLE AND ANOTHER
VERSUS
DNYANOBA GANGARAM GADHE AND ANOTHER
...
AGP for Applicants : Mr.P.G.Borade
Advocate for respondent no.1: Mr.A.S.Deshpande
...
CORAM : P.R. BORA, J.
Dated: July 14, 2016
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PER COURT :-

1. The present application is filed seeking condonation of delay which has occurred in filing the restoration application by the petitioner / applicant for restoration of Writ Petition No.381/1989, dismissed by this Court vide order passed on 6/4/2004 in default. The delay of 3499 days is stated to have been occurred in filing the present application. Learned A.G.P. submitted that, previously, learned Counsel Shri U.B.Binwade was appearing for the petitioner. Learned A.G.P. further submitted that Shri U.B. Binwade expired in the year 2004 and, thereafter, the matter remained unattended. Learned A.G.P. further submitted that in the year 2005, the Godawari Marathwada Irrigation Development

Corporation was merged into the State Government on 1.1.2005. However, no information of the present petition was received to the State from the erstwhile petitioner, namely, Godawari Marathwada Irrigation Development Corporation. Learned Counsel further submitted that only when the present petitioner filed an application seeking benefits on the basis of the order passed that the petitioner came to know that the Writ Petition filed by them has been dismissed for want of prosecution. Learned A.G.P. further submitted that, thereafter, all prompt steps were taken, however, in taking sanctions at different levels and complying with necessary requirements, some time was consumed and, as such, the delay of 3499 days has occurred in presenting the present application. Learned A.G.P. submitted that the petitioner needs to be given an opportunity to contest the petition on merits and has prayed for allowing of the application.

2. Shri A.S.Deshpande, learned Counsel appearing for respondent no.1, has strongly opposed for granting the request so made in the application. Learned Counsel submitted that the reasons as assigned are insufficient and delay of such huge period cannot be condoned for the reasons so stated. The averments in the pleadings reveal that on 25th February, 2010, the applicants had become aware of the fact that the Writ Petition filed by them has been dismissed in default in 2004 whereas the present application is filed on 6.12.2013. Learned Counsel

submitted that for the said period of delay, there is absolutely no explanation and whatever explanation has been given as regards to the procedural requirement, cannot be accepted having regard to the long period of three and half years. Learned Counsel further invited my attention to the order passed by this Court in the original Writ Petition on 6th April 2004, which clearly indicates that after the death of Advocate Mr.U.B.Binwade, the petitioners were served with the Court service notice and despite such service, none appeared for the petitioner on the dates given in the matter thereafter. Learned Counsel submitted that, thus, the Court was left with no option except to dismiss the petition for want of prosecution. Considering all aforesaid facts, learned Counsel submitted that the application be rejected.

3. After having considered the submissions advanced by the learned Counsel appearing for the respective parties, I am not inclined to allow the present application. The delay which has occurred is of huge period and the grounds which are stated in the application are not just and sufficient for condoning such delay. The very contention put forth by the learned A.G.P. that after the death of Mr.Binwade, there was no communication and that was the reason the matter remained unattended, cannot be accepted in view of the observations made by this Court in the order passed dated 6.4.2004, while dismissing the petition for default. If after service of the

Court notice also, the petitioner had chosen to remain absent, they must blame themselves. Further, even if the applicant petitioner became aware of the fact, according to their own contention, in the year 2010, the present application has been filed on 31st December, 2013. The reason stated for the delay in the intervening period of taking sanction and complying with the procedural requirement also cannot be accepted. In view of the fact that the delay is of huge period and the reasons stated therefor are not at all sufficient, I am not inclined to condone the delay. Hence, the following order:

ORDER

1. The Civil Application is rejected.

(P.R. BORA, J.)

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agp/-