

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

950 WRIT PETITION NO. 11408 OF 2016

LAXMAN BHAU PUJARI AND OTHERS
VERSUS
SAVKAR BHAU BORUDE AND ANOTHER

...

Advocate for Petitioners : Shermale K. N.
Advocate for Respondents 1 & 2 : Sheetal V. Salunke h/f. V.D.
Salunke

...

CORAM : T.V. NALAWADE, J.
DATED : 2nd December, 2016.

ORDER :

1. The petition is filed to challenge the order made on Exh. 1 in Misc. Civil Application No. 167/2017. Both the sides are heard.

2. Aforesaid proceeding was filed in District Court, Ahmednagar by present respondents for condonation of delay of 44 days caused in filing Misc. Civil Appeal against the order of temporary injunction made on Exh. 5 in R.C.S. No. 143/2016, which is pending in the Court of Civil Judge, Junior Division, Parner. The respondents, defendants contended in the delay condonation application that the notice of temporary injunction application was not served on them and when they learnt about passing of the order, they applied for certified copy and then

they filed Misc. Civil Appeal.

3. The record which is considered by the District Court and which is produced before this Court show that exparte ad-interim temporary injunction was not granted and notice was issued on Exh. 5 by the Trial Court. Bailiff gave report on 29.2.2016 that defendants were not available and then he returned the summons and notice. It appears that subsequently, steps were taken and another notice was sent by R.P.A.D. and postman gave remark that intimation was given, but the notice, packet was not claimed by the defendants. On that basis, exparte order was made and temporary injunction application came to be granted exparte by the injunction order and defendants are prevented from making construction on the suit property.

4. It appears that after making of the order of exparty temporary injunction on 7.4.2016, this order was handed over to Court Officer, Bailiff for service. On 20.4.2016 he gave report that he had tendered the notice to defendant Nos. 1 and 2, but they refused to accept. He sworn the affidavit before the Assistant Superintendent in that regard. Thus, it can be said that there is report of Court Officer, Bailiff showing that he had

attempted to serve the notice as per the procedure, but defendants refused to accept it.

5. Though in the application filed for condonation of delay, the defendants contended that they learnt about passing of this order on 6.6.2016 not much can be made out from that contention. Nothing could have been achieved by the defendants by not appearing in the suit as there was possibility of making of any order behind their back.

6. Condoning the delay is within the discretion of the Court. Courts are expected to take liberal approach. The learned counsel for petitioners placed reliance on some cases reported as **AIR 1987 SUPREME COURT 1353 [Collector, Land Acquisition, Anantnag and Anr. Vs. Mst. Katiji and Ors.]**, **AIR 2008 SC (Supp) 1025 [Pundlik Jalam Patil (Deceased by Lrs.) Vs. Exe. Eng. Jalgaon Medium Project and Anr.]** and **2014 (5) Mh.L.J. 718 [Leela Fondu Mayekar and Ors. Vs. Damodar Datta Zuwarkar and Anr.]**. Whether delay can be condoned or cannot be condoned and discretion can be used or cannot be used depend on the facts and circumstances of each and every case. In the present case, District Court has used the discretion for condoning the delay and some cost is also

imposed. In view of these circumstances, this Court holds that it is not desirable to use extraordinary jurisdiction to interfere in the order made by the District Court.

7. In the result, the petition stands dismissed. The District Court is to expedite the matter and in any case, within 45 days from the date of receipt of the order.

[T.V. NALAWADE, J.]

SSC/