

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

**Second Appeal No.698 of 2015
With
Civil Application No.15744 of 2015**

- 1) Zilla Parishad Parbhani,
Through its Chief Executive
Officer, Zilla Parishad,
Parbhani.
- 2) Education Officer (Primary)
Zilla Parishad, Parbhani,.
- 3) Headmaster, Primary School
Village Digras,
Taluka & District Parbhani. .. **Appellants.**

Versus

- 1) Yashodabai w/o Asaram Bombale,
Age 70 years,
Occupation : Household,
R/o Digras,
Taluka and District Parbhani.
- 2) Sharda Sudamrao Giram,
Age 40 years,
occupation: Household,
R/o Porwad,
Taluka & District Parbhani.
- 3) Vishnu Asaram Bombale,
Age 29 years,
Occupation: Agriculture,
R/o Digras,
Taluka & District Parbhani.
- 4) Geeta Pandurang Chopade,
Age 26 years,
Occupation: Household,
R/o Brahmangaon,

Taluka & District Parbhani.

5) Subhadrabai Sudamrao Giram,
Age 27 years,
Occupation: Household,
R/o As above.

6) Govind Asaram Bombale,
Age 21 years,
Occupation: Agriculture,
R/o As above.

7) President,
Sarva Shiksha Abhiyan,
Digras,
Taluka & District Parbhani.

.. Respondents.

Shri. Vivek Bhavthankar, Advocate, for appellants.

Shri. S.B. Ghatol Patil, Advocate, for respondent No.3.

CORAM: T.V. NALAWADE, J.

DATE : 6th JUNE 2016.

JUDGMENT:

1) The appeal is admitted. Notice after admission made returnable forthwith. Taken up by consent for final disposal.

2) The appeal is filed to challenge the order made by the learned Ad-hoc District Judge-1 Parbhani in M.A.

(R.J.E.) No.357/2015. The application was filed for condonation of delay of 287 days caused in filing appeal in District Court against the judgment and decree of Regular Civil Suit No.74/2010 which was pending in the Court of the Civil Judge Senior Division Parbhani. The suit was filed by the present respondents for the relief of possession and injunction against the present appellants and the suit came to be decreed on 11-9-2014.

3) The appeal came to be filed by the Zilla Parishad along with delay condonation application after expiry of the period fixed for filing appeal. After considering the contentions made by the Zilla Parishad regarding delay caused in filing the appeal, the learned Ad-hoc District Judge rejected the application. It is held that no sufficient cause is shown.

4) In view of nature of dispute, this Court had asked the learned counsel representing the Zilla Parishad to show something on the basis of which it can be said that the Zilla Parishad had some right or interest in the land. For the present purpose this Court has considered

photo copies of the so called gift document made by the original owner and the so called resolution made by the Village Panchayat of acceptance of the gift and of making construction of Zilla Parishad school on the disputed land.

5) It appears that the application for getting certified copy of the judgment and decree was made after about 10 months though the appeal was filed within 12 days after getting the certified copy of the judgment and decree from the trial Court. Learned counsel for the respondents submits that at present there is nothing to show that the Zilla Parishad is running school in the disputed place. Some photographs in that regard are produced on the record showing that the building is abandoned and it is not having even the doors.

6) Nothing could have been achieved by the Zilla Parishad by not filing appeal in time. It is noticed that many counsels appointed by the local body and the Government are not diligent. Possibility is there that the decision was not informed to the Zilla Parishad in time. Possibility that employees of the Zilla Parishad were not

diligent is also there. In such cases local bodies are expected to take action like disciplinary action against the employees. This Court expects that the Zilla Parishad takes such action against the concerned.

7) In view of the aforesaid record and the circumstance, this Court holds that opportunity needs to be given to the Zilla Parishad to take decision of the matter in first appeal on merits.

8) Though there are aforesaid circumstances, this Court holds that delay can be condoned subject to payment of cost of Rs.5000/- by the Zilla Parishad to the original plaintiffs. The cost needs to be deposited in the lower appellate Court.

9) The appeal is allowed. The order made by the learned Ad-hoc District Judge-1 Parbhani in M.A. (R.J.E.) No.357/2015 is hereby set aside. M.A.(R.J.E.) No. 357/2015 is allowed. Delay caused in filing first appeal in the District Court is condoned. This order is subject to condition of payment of cost of Rs.5,000/- (Rupees Five

Thousand only) by the Zilla Parishad within 30 days from today in the District Court. If the cost amount is not deposited it is to be presumed that present proceeding is dismissed. If the cost is deposited, the appeal be registered. The appeal is to be disposed of within six months from the date of registration of the appeal. All the points are kept open and the observations with regard to copies of gift document and resolution are only for the purpose of the present proceeding.

10) In the above terms the present appeal is allowed and disposed. Civil Application stands disposed of. Authenticated copy is allowed to both the sides.

Sd/-
(T.V. NALAWADE, J.)

rs1