

IN THE HIGH COURT OF JUDICATURE AT MUMBAI
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.195 OF 2016

Rajendra Bhauso Khanwilkar ... Petitioner
Vs.
State of Maharashtra through District Collector,
Kolhapur and others ... Respondents

Mr. Tanaji Mhatugade for Petitioner.
Ms M. S. Bane, 'B' Panel AGP for Respondents No.1 and 2-State.
Mr. Manoj A. Patil for Respondent No.3.

CORAM : R. G. KETKAR, J.
DATE : FEBRUARY 04, 2016

P.C. :

Heard Mr. Mhatugade, learned Counsel for petitioner, Ms Bane, learned AGP for respondents No.1 and 2-State and Mr. Patil, learned Counsel for respondent No.3 at length. Rule. Learned Counsel for respective respondents waive service. At the request and by consent of the parties, Rule is made returnable forthwith and the Petition is taken up for final hearing.

2. By this Petition under Article 227 of the Constitution of India, petitioner has challenged the judgment and order dated 17.12.2015 passed by the learned Ad-hoc District Judge-2, Kolhapur below exhibit-18 in Miscellaneous Civil Application No.292 of 2015. By that order, the learned District Judge rejected the application made by the petitioner for stay of the trial Court's decree dated 27.07.2015 pending the hearing of application for condonation of delay of 33 days in filing the appeal.

3. Mr. Patil, upon taking instructions from the instructing Advocate representing respondent No.3, states that by consent, application for condonation of delay of 33 days in filing the appeal may be allowed.

The application for stay of the decree may also be allowed by directing the learned District Judge to decide the Appeal in a time bound manner. Learned Counsel for the parties agree that they will appear before the learned District Judge on 10.02.2016 and for that purpose, no fresh notice be issued to them.

4. In view thereof, by consent of the petitioner and respondent No.3, Petition is disposed of in the following terms:

- a. Impugned order dated 17.12.2015 is set aside;
- b. The application for condonation of delay of 33 days in filing the appeal stands allowed;
- c. District Court, now, shall register the appeal;
- d. Parties shall appear before the learned District Judge on 10.02.2016 when the learned District Judge shall forthwith call for R & P from the trial Court. Petitioner assures that within two weeks from the receipt of R & P, he will file private paper-book and serve copy in advance on the other side;
- e. The learned District Judge is requested to decide the Appeal within 3 months from the filing of the private paper-book;
- f. During the pendency of the Appeal, the judgment and decree passed by the learned trial Judge is stayed;
- g. All contentions of the parties on merits are expressly kept open.
- h. Rule is made absolute in the aforesaid terms with no order as to cost.

(R. G. KETKAR, J.)