

Sequeira

*IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION*

WRIT PETITION NO. 1639 OF 2015

President, Secretary
Mahatma Phule Pratisthan, Vairag
Taluka Barshi, District Solapur & 2 ors. .. Petitioners

Versus

Shivaji Trimbak Dhekane,
R/o.Dhamangaon (Du), Taluka Barshi,
District Solapur & 3 others. .. Respondents

Mr.I.M.Khairdi, for Petitioners.
Mr.G.N.Salunkhe a/w Mr.Umesh Kurund, for Respondent No.1.
Mr.M.S.Metkari-Assistant Government Pleader, for Respondent
Nos.3 & 4.

***CORAM: N.M.Jamdar, J.
Friday 8 January, 2016***

Oral Order:

Heard learned counsel for the parties.

2. The Petitioner-Management challenges the order passed by the School Tribunal, Solapur dated 18 December 2014 allowing the application for condonation of delay of two years and eight months in filing the appeal. The primary reasons given by the School Tribunal for condoning the delay is pendency of proceedings between the parties in this Court. The School Tribunal has held that after the proceedings were concluded, the Respondent No.1

filed an appeal and the Respondent No.1 was not negligent in approaching the Tribunal.

3. The order passed by the School Tribunal condoning the delay is discretionary. By order dated 14 September 2011 the Education officer had passed an order in favour of the Respondent No.1 which though was stayed at the time of issuing notice on 3 October 2011 in Writ Petition No.7918 of 2011, the Writ petition was finally disposed of on 14 October 2013. By this order, the Court permitted the Respondent No.1 to adopt appropriate remedy and made certain observations that the delay caused would be considered favourably. The learned counsel for the Petitioner submitted that the averments made in the appeal memo by Respondent No.1 are not correct and the application is not bonafide and the exercise of discretion is incorrect. It is not disputed and cannot be disputed that the proceedings between the parties finally came to an end in this Court on 14 October 2013. Thereafter the appeal has been filed on 14 January 2014. The learned counsel for the Petitioner contended that after disposal of the Writ petition the appeal is not filed within 30 days. This delay is not of substantial period. Once the Tribunal has exercised its discretion positively in condoning the delay and that this Court had given liberty to Respondent No.1 to agitate the issue before the appropriate forum, I am not inclined in writ jurisdiction to set aside the impugned order.

4. The appeal filed by the Respondent No.1 will be considered on its own merits and the reference made above to the orders of

this Court is only for the purpose of sustaining the discretion used by the Tribunal and the effect of these orders will be considered on its own merits at the time of hearing of the appeal. Writ petition is **rejected.**

(N.M.Jamdar, J.)