

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

WRIT PETITION NO.8099 OF 2017

Mr.Vinod Harihar Mishra & Anr.

..Petitioners

V/s.

The State of Maharashtra
Through Office of Government
Pleader & Ors.

..Respondents

Mr.Vinod Pandey a/w Mr.Presh More i/by Mr.S.U. Pandey for the
Petitioners.

Ms.Vaishali Nimbalkar, AGP for Respondent No.1.

Mr.Ritesh Singh for Respondent No.4.

CORAM : M. S. SONAK, J.

DATE : 08th SEPTEMBER 2017

P.C.

1. Heard learned counsel for the parties.

2. Rule.

3. At the request of and with the consent of the learned
counsel for the parties, Rule is made returnable forthwith.

4. The challenge in this petition is to the order dated
03-05-2017 by which the Additional Collector (Respondent No.2)
has condoned delay of 463 days in institution of appeal by the
respondents.

5. The impugned order dated 03-05-2017 (Translation) reads thus :-

“03/05/2017 Advocate for appellant present and respondent present, sent his advocate is absent.

Hence the Advocate for appellant on the points delay, I am concern that the delay shall be condone in the interest of justice as per his application to condone the delay in the matter, hence I condone the delay. In the matter Respondent No.4 present he said that they have not received earlier notice hence time been given, matter postponed for hearing on 14/06/2017.”

6. In this case, the delay was of 463 days. The petitioner was present in the Court but his advocate was absent. Yet another opportunity, was required to be given to the petitioner. That apart, the impugned order does not indicate any application of mind to the cause which may have been stated by the respondent in the application seeking condonation of delay. By merely observing that it is in the interest of justice to condone the delay, there is no question of condoning the delay, particularly when the delay is of 463 days. On this short ground, the impugned order is set aside.

7. The learned counsel for the petitioner states that the petitioner will file reply to the application seeking condonation of delay positively on 11th September 2017, which is the date fixed by the Additional Collector in the matter. In case, the respondent desires to file any rejoinder, the respondent may do so within a period of one week thereafter. The Additional Collector is requested

to decide the application for condonation of delay after afford of suitable opportunity to them. Both the parties not to seek any unnecessary adjournments.

8. It is made clear that this Court has not adverted to the merits of cause shown, and therefore, all contentions of all parties are left open to be decided by the Additional Collector on their own merits and in accordance with law.

9. Rule is made absolute to the aforesaid extent. There shall be no order as to costs.

10. Parties to appear before the Additional Collector on 11th September 2017 and produce copy of this order as availed by them from the web-site of this Court.

(M. S. SONAK, J.)