

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

WRIT PETITION NO. 5172 OF 2013

**YASHWANTRAO RAMCHANDRA JADHAV
VERSUS
ASHOKRAO VITHALRAO DESHMUKH AND OTHERS**

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Advocate for Petitioners : Mr Gunale V.D.
Advocate for Respondents 1,3,5 to 13, 19-21, 27 to 29
and 34 : Mr Surwase B.R.
Advocate Mr Deshmukh Umakant B for Respondent
No.17.

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CORAM : V.K. JADHAV, J.

Dated: November 01, 2017

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PER COURT :-

1. Being aggrieved by the judgment and order passed by the District Judge-1, Biloli, District Nanded dated 28.11.2012 below Exh. 96 in Misc. Application (RJE) No.15/2009, original applicant has preferred this petition.

2. Petitioner is the original applicant in Misc. Application (RJE) No.38/2001. Petitioner has filed said Misc. Application (RJE) No.38/2001 for condonation of delay of 5 (five) months 8 days caused in filing the restoration petition, which came to be dismissed in

default on 17.12.2008.

3. Learned counsel for the petitioner submits that, petitioner was suffering from paralysis. He was admitted in the Hospital. The learned District Judge-1, Biloli rejected the application Exh.96 on the ground that though, Medical Certificate is produced on record, Discharge Card is not produced. Learned advocate engaged by the petitioner also remained absent before the Court whenever the matter was fixed for hearing by the Court. The learned counsel submits that, though petitioner has explained satisfactorily the delay caused in filing the Miscellaneous Application (RJE) No.15 of 2009, the learned District Judge, Biloli has not considered the same and rejected the application. Learned counsel submits that, the Miscellaneous Application (RJE) No.38/01 has been preferred against the Judgment and Order passed by learned Joint Charity Commissioner.

4. Learned counsel appearing for the respondent

Nos. 1, 3, 5 to 13, 19 to 21, 27 to 29 and 34 submits that, for a considerable period, petitioner has not taken steps for service against unserved respondents. Consequently, Miscellaneous Application (RJE) No. 38 of 2001 came to be dismissed in default by the District Judge by order dated 17.12.2008. Even then the petitioner has not filed the application for restoration within time and filed the application for restoration alongwith delay condonation application Exh.96. Learned counsel submits that, petitioner was admitted due to illness for not more than three-four days, but he is seeking condonation of delay of five months and some odd days on its basis. Since discharge card was not produced before the Court, the learned District Judge-1 has rightly rejected the application seeking condonation of delay.

5. I have also heard learned counsel for respondent No.17.

6. It appears that, the original change report came to

be decided long-back and being aggrieved by the same, the petitioner approached the Joint Charity Commissioner by filing appeal bearing No. 21 of 1997. The same was disposed of on 22-06-2001. The petitioner has preferred a Miscellaneous Application (RJE) No. 38 of 2001 within limitation, however, for want of steps against respondents, learned District Judge-1, Biloli by order dated 17.12.2008 dismissed said Miscellaneous Application (RJE) No. 38 of 2001 for want of prosecution. Consequently, the petitioner has filed Miscellaneous Application (RJE) No. 15 of 2009 alongwith application for condonation of delay (Exh. 96) for restoration of the said Miscellaneous Application (RJE) No. 38 of 2001. The petitioner was 72 years of age when he filed present Writ Petition. He was suffering from Paralysis at the relevant time and, he has produced on record Medical Certificate to that effect. Though, discharge card is not produced on record, as per the contents of the Medical Certificate, petitioner was suffering from Paralysis. It thus appears that, petitioner was prevented from sufficient cause to prefer

an application for restoration within time. Thus, by imposing certain conditions, said application Exhibit-96 can be allowed, however, learned District Judge is to decide the Miscellaneous Application (RJE) No. 15 of 2009 on its own merits. Hence, the following order :-

ORDER

1. Writ petition is hereby allowed.
2. The impugned order dated 28.11.2012 below Exh. 96 in Miscellaneous Application (RJE) No. 15 of 2009 is hereby quashed and set aside.
3. Application at Exh.96 in Miscellaneous Application (RJE) No. 15 of 2009 is hereby allowed in terms of its prayer clauses subject to payment of costs of Rs.5,000/- (Rs. Five Thousand).
4. The learned District Judge-1, Biloli, District Nanded shall decide the Miscellaneous Application (RJE) No. 15 of 2009 within three months from the date of appearance of the parties, on its own merits in accordance with the law.

5. Parties shall appear before learned District Judge-1, Biloli on 15th of November, 2017.
4. Writ petition is accordingly disposed of.

(V.K.JADHAV, J.)

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