

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

Writ Petition No. 04250 of 2017

District : Latur

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| <p>1. Mallikarjun Gangadharappa Ankalkote,
Age : 61 years,
Occupation : Business,
R/o. Opposite R.R. Tapadia
 (Chartered Accountant),
Kamdar Road, Latur.</p> | |
| <p>2. Sambappa Mallikarjun Ankalkote,
Age : 39 years,
Occupation : Business,
R/o. Opposite R.R. Tapadia
 (Chartered Accountant),
Kamdar Road, Latur.</p> | <p>.. Petitioners
(Original
defendants)</p> |

versus

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| <p>M/s. Goyal Trading Company,
A registered Partnership Firm,
Represented by its partner,
Shri Rameshchandra Pralhadrai
Agarwal,
Age : 65 years,
Occupation : Business,
R/o. Navandar Galli, Latur,
Through Power of Attorney Holder,
Shri Damodar Mathuraprasad
Agarwal,
Age : 72 years,
Occupation : Business,
R/o. New Adarsh Colony, Latur.</p> | <p>.. Respondent
(Original
plaintiff)</p> |
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*Mr. Dhananjay P. Deshpande, Advocate, for the
petitioners.*

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CORAM : M.S. SANKLECHA, J.

DATE : 25TH APRIL 2017

ORAL ORDER :

This petition under Article 226 of the Constitution of India challenges the order dated 25th November 2016, passed by the District Judge, Latur. The impugned order has condoned delay of 93 days in filing an appeal from the order / judgment dated 10th February 2015 passed by the Extra Joint Civil Judge (Senior Division), Latur.

02. The impugned order records that the appeal has been filed by one Mr. Damodhar Agarwal, the power of attorney holder of M/s. Goyal Trading Company, a partnership firm. The reason set out by the applicant i.e. power of attorney holder for not filing the appeal in time was that he was unwell and was under treatment of Dr. Anil Rathi and, therefore, was not able to contact his Advocate for filing the necessary appeal. Similarly, one of the partners of the appellant - Firm was not keeping well as he was suffering from blood pressure, diabetics and cardiac issues, which resulted in his being unable to contact the Advocate. Oral evidence of Mr. Damodar Agarwal was recorded and on consideration of the same, the impugned order records that the delay has been satisfactorily explained. In particular, it records the fact that though there are four partners of M/s. Goyal Trading Company, three partners are ladies and

only male partner Mr. Rameshchandra Agarwal who was unable to attend to the litigation as he was unwell and was advised bed rest. It was in the aforesaid circumstances, the power of attorney holder Mr. Damodar Agarwal had to attend all legal proceedings including filing of appeal. In these circumstances, the Court was satisfied that the appeal could not be filed by the power of attorney holder within time due to his illness and the illness of sole male partner of the firm. The delay was condoned on payment of costs of Rs. 5,000/-.

03. Mr. Deshpande, learned Counsel appearing for the petitioners, submits that the Firm had four partners and only evidence of one of the partners was led by the respondents. The other three partners, according to Mr. Deshpande, should have prosecuted the appeal, if their power of attorney holder was not well. This submission of Mr. Deshpande cannot be accepted as the impugned order records that out of four partners, three partners are ladies and one male partner is unwell. Therefore, power of attorney had been given by them to Mr. Damodar Agarwal. In the context of the fact that the male partner was not keeping well and the power of attorney holder Mr. Damodar Agarwal was also suffering from illness, the satisfaction of the Court that he was unwell and could not meet his Advocate for the purpose of filing appeal was found to be a reasonable explanation for the delay.

04. The above view taken in the impugned order cannot be said to be perverse so as to exercise supervisory jurisdiction of this Court under Article 227 of the Constitution of India.

05. Notwithstanding the expression of my above view, Mr. Deshpande proceeded to make submission that in view of the decisions of the Apex Court and this Court, the impugned order calls for interference under Article 227 of the Constitution of India. Mr. Deshpande first invited my attention to the decision of this Court in the case of **Smt. Varhyan and others Vs. Smt. Kala, Ku. Sonu and Ku. Jeetu** [2015(6) ALL MR 324]. The said decision was rendered in an appeal filed against the order passed in Second Appeal from an order passed in First Appeal rejecting the application of the petitioner therein for condonation of delay. There was delay of 354 days in filing the appeal. Moreover, the jurisdiction which was exercised by the Court in the aforesaid decision was an appellate jurisdiction and not supervisory jurisdiction under Article 227 of the Constitution as in this case. Thus, it would not have any application to the present facts. Needless to state, the exercise of discretion to condone or not to condone the delay depends upon facts of each case and reasons set out before the authority for the purpose of exercising jurisdiction of condonation of delay.

06. The other decision relied by Mr. Deshpande is of the Apex Court in the case of **Balwant Singh**

(Dead) Vs. Jagdish Singh & others [2010(6) ALL MR 480 (S.C.)]. The said decision was rendered in the context of 778 days delay in bringing legal heirs on record so as to set aside abatement of the suit. In the facts urged before it, the Court found that the reasons set out for the delay in taking out the application to set aside the abatement were not sufficient. The Court found that the applicants were callous about pursuing appeal and they had acted irresponsibly and with negligence. Besides, the Court has also recorded the fact that the applicants have not set out sufficient reasons for condoning the inordinate delay. From the above facts, it is evident that the circumstances and the facts before the Apex Court in dealing with the delay condonation application for setting aside abatement of suit were completely different from the facts which arise in the present case. The aforesaid two decisions relied by Mr. Deshpande are of no assistance to the petitioners in the present facts.

07. Needless to mention, that time and again, the Apex Court has laid down that in the matter of condonation of delay, the Courts should be pragmatic and justice oriented. The impugned order has awarded costs of Rs. 5,000/- to the petitioners while condoning the delay.

08. In the present facts, the discretion exercised by the learned District Judge cannot be said to be perverse. No interference is called for

in the impugned order in exercise of extraordinary jurisdiction of this Court under Article 227 of the Constitution.

09. In the result, the Petition is dismissed.
No order as to costs.

(M.S. Sanklecha)
JUDGE

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