

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders		Court's or Judge's orders
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CRIMINAL APPLICATION NO.2394 OF 2017

DNYANESHWAR TRADING COMPANY
VERSUS
GODAVARI SAHAKARI DUDH UTPADAK
SANSTHA MARYADIT AND OTHERS

...
Advocate for Applicant: Mr.Shinde Chandrakant K.
Respondents served – absent.

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CORAM : V.L. ACHLIYA, J.
Dated: JULY 27, 2017

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The applicant has moved this application seeking condonation of of 1473 days' delay caused in filing appeal along with application seeking leave to file appeal, on the grounds set out in the application.

2. Heard learned Counsel for the applicants. Respondents though served, failed to appear.

3. In nutshell, it is contention of the learned Counsel for the applicant that delay was not deliberate but, it was due

to certain wrong advice received by the applicant in presenting appeal against the impugned judgment and order of acquittal passed by the trial Court. He submits that the appeal was rightly presented in the High Court against the impugned judgment and order of acquittal. However, on the advice of the Counsel then appearing for the applicant, the appeal was withdrawn with liberty to file it in the Sessions Court u/s 372 of the Code of Criminal Procedure. Accordingly, appeal was presented in the year, 2014. Vide order dated 18.7.2016 passed by the Sessions Court, the appeal was returned with direction to present it before the proper Court as the appeal was not maintainable before the Sessions Court. He further submits that the applicant misplaced the memo of appeal returned for presentation to proper court. Although application was drafted seeking leave to file appeal on 4th August, 2016, appeal could not be filed due to misplacement of appeal memo. In spite of making efforts to search the papers, the papers could not be traced out. Ultimately, the appellant decided to file appeal by drafting fresh memo of appeal and presented the appeal. In this background, learned Counsel for

the applicant submits that the delay was not deliberate.

4. In view of the unchallenged and uncontroverted pleadings of the applicant, I am of the view that the delay is satisfactorily explained. I am, therefore, inclined to allow the application and condone the delay. Hence, the following order is passed:

: ORDER :

i) Application is allowed. Delay is condoned. Application stands disposed of.

ii) Application seeking leave to file appeal be registered and placed for hearing on 7th August, 2017.

(V.L. ACHLIYA, J)