

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CIVIL APPLICATION NO. 2412/2017

IN

WRIT PETITION NO. 939 OF 2002

ABDUL GAFFAR ABDUL AZIZ KAZI

VERSUS

THE STATE OF MAHARASHTRA AND OTHERS

Advocate for Applicant : Shri A.P. Gaikwad

h/f. Shri S.S. Kazi.

AGP for Respondent No. 1 : Shri S.P. Deshmukh.

Advocate for Respondent No. 2 (vi) : Shri M.P. Tripathi.

CORAM : RAVINDRA V. GHUGE, J.

Dated : 23rd June, 2017

PER COURT :-

1. By this application, the original petitioner prays for condonation of delay of 4 years and 252 days, and further prays for recalling the order dated 13/10/2008 passed by this Court and for restoration of the Writ Petition, which was dismissed.

2. The applicant submits that since he was residing at Osmanabad, he could not frequently come to Aurangabad. His Writ Petition No. 939/2002, was dismissed in default by order dated 13/10/2008. His advocate did not inform him about the

dismissal and hence after he got the knowledge on 09/04/2013, he searched for another advocate and filed this application on 22/07/2013, and as such the delay technically is of five years. He, further, submits that the petition was earlier admitted and ad-interim relief in terms of prayer Clause 'C' was granted to the petitioner. He, therefore, submits that an irreparable harm and serious prejudice will be caused to the applicant. As he had a good case on merit, he was granted interim relief by this Court.

3. Learned advocate for the respondent opposes this application for two reasons. Firstly, that after interim relief was granted to the applicant / petitioner and the matter was admitted, he did not conduct the matter before this Court, whenever it was called out. On account of having acquired interim relief, the petitioner did not want to conduct the matter. Secondly, though the Civil Application is filed for condonation of delay of five years, it was moved for the first time on 17/2/2017, and as a consequence of which the matter become delayed by nine years. He, therefore, prays for the rejection of the Civil Application. In the alternative, he prays for costs of Rs.

50,000/- (Rupees Fifty Thousand only), if the petition is to be restored.

4. Having considered the submissions of the learned advocates and having perused the record available, it appears that an immovable property in the form of agricultural land is the subject matter. The two sides have been in litigation from 1987 onwards. The applicant / petitioner was granted interim relief by this Court. If the Writ Petition is not restored, the applicant is likely to suffer a loss which can not be compensated in terms of money.

5. In order to meet the ends of justice, and because of the mistake committed by the Advocate of the applicant, he should not be made to suffer irreparable loss and hence this application is allowed on the following conditions :

(A) As the applicant present in the Court has agreed to deposit costs of Rs. 25,000/- (Rupees Twenty Five Thousand only) within two months, he is given time of two months to deposit the amount in this Court as a condition

precedent for restoring of the petition.

(B) Learned counsel for the contesting respondents No. 2 (vi) i.e. Shridhar Bajirao Kadam submits that he would withdraw an amount of Rs. 20,000/- (Rupees Twenty Thousand only) towards costs and would donate Rs. 5,000/- (Rupees Five Thousand only) to the Bombay High Court, Advocates Associations' Library, Bench at Aurangabad.

(C) After the costs are deposited, the Writ Petition shall stand restored. The petitioner is at liberty to request for a final hearing in the petition.

(D) Respondent No. 2 (vi) Shridhar Bajirao Kadam shall withdraw Rs. 20,000/- (Rupees Twenty Thousand only) from this Court upon presenting an application and identified by the advocate, with a recent photograph, recent address proof and the Election Commission Voter ID card.

(E) If the applicant / petitioner fails to deposit the amount as above, this order shall stand recalled by restoring the order dated 13/10/2008 and Writ Petition

No. 939/2002 shall stand dismissed.

(F) After restoration of the Writ Petition, the petitioner shall follow the due procedure and supply requisite copies of the Writ Petition paper book, within a period of four weeks for reconstruction of the file. The Registrar shall thereafter verify the same.

(RAVINDRA V. GHUGE, J.)

S.P.C.