

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.9306 OF 2016
(Municipal Council, Osmanabad Vs. M/s R.Z.Malpani, through its
Proprietor)

Mr.R.V.Naiknavare, Advocate for the petitioner.
Mr.C.R.Deshpande, Advocate for the respondent.

(CORAM : RAVINDRA V. GHUGE, J.)

DATE : 20/12/2017

PER COURT :

1. By this petition, the petitioner/Municipal Council has put forth prayer clause 24(C) as under :-

“24(C) – Your Lordship may graciously be place to issue a writ or any other appropriate writ or order in the like nature of Writ, by quash and set aside the impugned order dated 26th July, 2016 passed by the learned District Judge Osmanabad in M.A.No.150 of 2015 allowing the petitioner to deposit the costs as order by the Hon’ble High Court.”

2. I have heard the strenuous submissions of the learned Advocate for the petitioner/Municipal Council and the sole respondent.

3. The petitioner places reliance upon the following two judgments to support its contention that merely because he failed to deposit the

costs, the doors of litigation should not be closed and the costs can be directed to paid even now :-

[a] D.Gowadia and Company, Mumbai Vs. Union of India, Pune [2009(3) CPMH 52]

[b] Yamunabai Pundalik Khachane Vs. Vijaya Dnyandeo Ingale and others [2008(1) Mh.L.J. 518 = 2007(6) All M.R. 875]

4. The petitioner had preferred Civil Misc.Application No.12/2010 seeking condonation of delay of 10 months and 13 days in filing an appeal u/s 34 of the Arbitration and Conciliation Act for challenging the award dated 30/01/2009. By order dated 12/02/2011, the delay was condoned on the condition that the petitioner shall deposit Rs.300/- as costs within a period of 8 days. The said amount was not paid and as such the order of the Lower Court dated 12/04/2011 lost its efficacy.

5. The respondent therefore preferred Reg.Darkhast No.34/2015 and thereafter the petitioner/Municipal Council woke up and filed M.C.A. on 04/12/2015 which is practically after 4 years and 6 months. By the impugned order, the Trial Court has rejected the application on the ground that reasons, which are acceptable for condonation of delay, have not been cited.

6. The Hon'ble Apex Court, in the matter of Collector, Land Acquisition Anantnag and another Vs. Mst. Katiji and others [(1987) 2 SCC 107] and Esha Bhattacharjee Vs. Managing committee of Raghunathpur Nafar Academy and others [(2013) 12 SCC 649] has crystallized the Law on condonation of delay. Lethargy, negligence and neglect cannot be the grounds for condoning the delay. 8 days time was granted by the Trial Court for enabling the petitioner to deposit the costs. U/s 148 of the CPC, the petitioner could have moved an application for seeking enlargement of time. This was not done. Apparently, the petitioner has grossly neglected the proceedings and has shown no respect to the order dated 20/04/2011.

7. Learned Advocate for the sole respondent has relied upon the judgment of the Hon'ble Apex Court in the matter of Union of India Vs. M/s Popular Construction Co. [AIR 2001, SC 4010] to contend that even otherwise, the order dated 12/04/2011 passed by the Court below condoning delay for enabling the petitioner to prefer an appeal u/s 34, is an illegal and unsustainable order. U/s 34 and the proviso there below, there can be no enlargement of time beyond 120 days as the Limitation Act is not applicable.

8. Considering the fact situation as above and the law laid down by the Hon'ble Apex Court in Union of India (supra), I do not find that the impugned order could be termed as being perverse and erroneous.

9. This petition, being devoid of merit, is therefore, dismissed.

(RAVINDRA V. GHUGE, J.)