

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.519 OF 2017
(Dnyanoba Rambhau Tandale Vs. The Branch Manager and another)

Mr.R.N.Bharaswadkar, Advocate for the petitioner.

(CORAM : Ravindra V.Ghuge, J.)

DATE : 07/08/2017

PER COURT :

1. The petitioner is aggrieved by the order dated 11/10/2014 which is challenged on 09/12/2016 in this writ petition. By the impugned order, the Appellate Court has refused to condone the delay of 4 years, 2 months and 23 days in filing the application for restoration of the appeal.

2. The learned counsel for the petitioner has strenuously criticized the impugned order. He submits that the medical reports about the illness of some of the relatives of the petitioner were not brought on record. The Appellate Court concluded that sufficient grounds are not indicated. The Appellate Court should have shown some sympathy and should have allowed MARJE No.2/2012 thereby condoning the delay.

3. Upon considering the submissions of the petitioner, I have gone through the petition paper book with his assistance.

4. Reg.Civil Appeal No.40/2004 (New No.82/2004) was dismissed in default on 14/09/2007. The decree holder preferred execution proceedings bearing MA No.156/2010. It was after the execution proceedings commenced that the petitioner filed an application for seeking restoration of the appeal which was dismissed in default on 14/09/2007.

5. The petitioner, besides bare pleadings in the application, did not adduce any documentary evidence to indicate that his father is 90 years old and he was not concentrating on his appeal. No evidence is led to indicate that the illness of the wife of the brother of the applicant prevented the petitioner from carrying out his day to day duties/activities and from attending the court proceedings. Considering the above, the Trial Court concluded that reasons for condoning 4 years, 2 months and 23 days delay, were not properly assigned and were not convincing.

6. The Hon'ble Apex Court in Esha Bhattacharjee Vs. Managing committee of Raghunathpur Nafar Academy and others [(2013) 12

SCC 649] has laid down the principles for considering applications for condonation of delay. In this case, there is no evidence on record either to show that the father of the petitioner is unwell or that his sister in law who was unwell, was solely dependent on the petitioner and was not dependent on her own husband when it came to taking medical treatment.

7. Considering the above, I do not find that the impugned order could be termed as being perverse and erroneous. This petition, being devoid of merit, is therefore, dismissed.

(Ravindra V.Ghuge, J.)