

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.128 OF 2016

IN

CRIMINAL APPLICATION NO.1866 OF 2007

SHRI BABALU RAJARAM RAJPUT)...APPLICANT

V/s.

NANDKUMAR BABURAO AIREKAR & ANR.)...RESPONDENTS

Mr.Rohit Joshi h/f. Mr.A.B.Borkar, Advocate for the Applicant.

Mr.P.H.Gaikwad-Patil, APP for the Respondent - State.

CORAM : A. M. BADAR, J.

DATE : 17th FEBRUARY 2017

P.C. :

1 This is an application for condonation of delay of about 3 years and 363 days occurred in filing an application for restoration of application for leave to appeal.

2 None appeared for respondent no.1. It is seen from the office endorsement that notice issued to respondent no.1 was refused by him. As such, it can be safely concluded that respondent no.1 is served with the notice of the application for condonation of delay.

3 Heard the learned advocate appearing for the applicant and the learned APP for respondent no.2. Perused the application. It is seen that as office objection was not removed, the application for leave to appeal was dismissed in default. Averments in the duly sworn affidavit seeking condonation of delay show that the learned advocate appearing for the applicant had inadvertently missed the matter and therefore, the fact of dismissal of the application for leave to appeal went unnoticed, resulting in delay. It is well settled that for faults of the advocate appearing for the party, the party cannot be penalised. Considering the averments made in the application which is on affidavit, and as those averments are not controverted, I hold that the applicant was prevented from sufficient cause from not filing the application for restoration in time. As such the order:

- i) The application for condonation of delay is allowed.
- ii) Delay condoned.

(A. M. BADAR, J.)