

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 3234 OF 2018

Devidas Budha Ahire

.. **Petitioner**

Versus

The State of Maharashtra and others

.. **Respondents**

Shri Ajay G. Talhar, Advocate for the Petitioner.

Shri P. N. Kutti, A.G.P. for Respondents.

CORAM : **S. V. GANGAPURWALA &**
SUNIL K. KOTWAL, JJ.

DATE : **11th June, 2018**

PER COURT :

1. The petitioner had filed original application along with Miscellaneous Application No. 476 of 2016 for condonation delay caused in filing original application.
2. The Miscellaneous Application No. 476 of 2016 is dismissed for not taking steps on 6th July, 2017. The petitioner filed application for restoration of the Miscellaneous Application No. 476 of 2016 bearing Miscellaneous Application No. 454 of 2017 with the Miscellaneous Application No. 484 of 2017 seeking condonation of delay in filing the restoration application.
3. We have heard Mr. Talhar, learned counsel for the

petitioner and the learned Assistant Government Pleader for respondents/State.

4. The Miscellaneous Application No. 484 of 2017 is filed seeking condonation of delay of 88 days caused in filing Miscellaneous Application No. 454 of 2017.

5. The Miscellaneous Application No. 476 of 2016 has been dismissed by the tribunal on 6th July, 2017, on the ground that the applicant had not taken steps to serve notice upon the respondents for six months. The Miscellaneous Application No. 454 of 2017 is filed for restoration of Miscellaneous Application No. 476 of 2016. As restoration application was delayed, Miscellaneous Application No. 484 of 2017 is filed for condonation of delay in filing restoration application. It appears that the petitioner failed to take steps to serve the respondents within a period of six months. Normally the litigant is not aware of the steps to be taken and it is the advocate who normally takes steps to serve the respondents. The litigant cannot be made to suffer on that count.

6. It is trite that when technical considerations and cause for substantial justice are pitted against each other, the cause for substantial justice has to be sub-served. The applicant was not going to gain by delay. It is stated that the applicant had collected the notices from the office of the tribunal and sent the same to the concerned respondents through speed post on 01.04.2017. However the notices of some of the respondents returned unserved. It is stated that, thereafter the matter appeared on 06.07.2017 and the advocate of the applicant could not remain present before the tribunal and the matter came to be dismissed.

7. Considering the aforesaid reasons, the impugned order dated 19.01.2018 is set aside. Miscellaneous Application No. 484 of 2017 and Miscellaneous Application No. 454 of 2017 are allowed. The tribunal shall decide Miscellaneous Application No. 476 of 2016 on its own merits.

8. Writ Petition accordingly stands disposed of. No costs.

[SUNIL K. KOTWAL, J.]
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[S. V. GANGAPURWALA, J.]