

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

17 CIVIL APPLICATION NO.14234 OF 2011
IN SAST/15728/2011

JABIULLAKHAN DULEKHAN PATHAN AND ORS.
VERSUS
BASMATHNAGAR MUNICIPAL COUNCIL BASMATHNAGAR THROUGH CHIEF
OFFICER

...
Advocate for Applicants : Smt.Jamdhade Maya R.
Advocate for Respondent no.1 : Shri H.I. Pathan
Respondent no.3 served.

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CORAM: V.L. ACHLIYA, J.

DATE: 15.10.2018

PER COURT :

- 1] The applicants have moved this application for condonation of 26 days delay in filing appeal.
- 2] Heard learned counsel for the applicants and the respondent no.1 – Municipal Council.
- 3] In brief, it is the contention of the learned counsel for the applicants that the delay caused in filing appeal is not deliberate and intentional but caused due to the reason that much time was spent in obtaining certified copy. It is submitted that the applicants are the poor persons and for filing the

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appeal, they were required to arrange money. In the process, delay of 26 days has been caused in filing the appeal.

4] On the other hand, the learned counsel for the respondent no.1 – Municipal Council opposed the application with contention that the cause as assigned in the application cannot be treated as sufficient cause to condone the delay. He submits that no sufficient cause has absolutely been assigned to condone the delay. It is further submitted that the applicants are not the poor persons and they are businessmen by profession. They are carrying on business from the premises of the Municipal Council. They are financially sound enough to meet the expenditure to be made for filing the appeal.

6] Considering the submissions advanced in the light of cause assigned to condone the delay, I am of the view the delay deserves to be condoned in the larger interest of justice. It is the contention of the applicants that there are conflicting decisions rendered by the Courts below and the applicants / appellants have good case to succeed in the appeal. In case, delay is not condoned, there is every likelihood that the applicants may lose a

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meritorious case for technical reason. On the contrary, if delay is condoned, no serious prejudice would cause to the respondents as inconvenience to the respondent on account of delay in filing appeal can be compensated in terms of money.

7] I am, therefore, inclined to allow the application subject to payment of costs of Rs.10,000/- to be payable by the applicants to the respondent no.1 within two weeks from the date of this order. Deposit of costs shall be condition precedent to condone the delay. On deposit of costs, the appeal be registered and placed for admission on 11.12.2018. In case the applicants fail to deposit the costs, then the order condoning the delay would stand recalled and the application alongwith appeal would stand dismissed.

8] The application is disposed of in above terms.

(V.L. ACHLIYA, J.)