

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 10882 OF 2018

Ambadas Gangaram Devkhule
Age 72 years, Occ. Pensioner,
R/o House No.407, S.No.213, 391,
Sadar Bazar, Bhingar, Taluka and
District Ahmednagar.

..Petitioner

Versus

Chief Executive Officer,
Cantonment Board, Bhingar,
Taluka and District Ahmednagar.

..Respondent

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Advocate for Petitioner : Shri Dixit Satyajeet S
Advocate for Respondents : Shri Patale Amol N.

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CORAM : RAVINDRA V. GHUGE, J.
Dated: October 04, 2018

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ORAL JUDGMENT:-

1. Heard learned counsel for the respective parties.
2. Rule.
3. By consent, Rule is made returnable forthwith and the petition is taken up for final hearing.
- 4 The petitioner is aggrieved by the order dated 16.4.2018 passed by the trial Court, by which, the delay of five months in filing the Civil

Application has been rejected and the delay caused in filing the restoration application with reference to RCS No. 677 of 2014 has not been condoned.

5. I have considered the strenuous submissions of both the sides. The respondent specifically contends that the suit is not maintainable and this petitioner is actually required to approach the Cantonment Board under Section 340 of the Cantonment Board Act, 2006 for challenging the notice with regard to illegal construction.

6. Considering the subject matter of the writ petition, I do not find it appropriate to deal with the objections of the Cantonment Board, while dealing with the issue, as to whether the delay should have been condoned by the trial Court or not.

7. In the light of the law laid down by the Honourable Apex Court in 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], the Court dealing with such an application for condonation is to consider whether the delay is deliberate or inordinate or laches / ulterior motive could be attributed to the conduct of the applicant. I do not find any such attributes to the conduct of the applicant from the

record before me.

8. In Collector, Land Acquisition (supra), it has been concluded in paragraph No.3 as under:-

“1. Ordinarily a litigant does not stand to benefit by lodging an appeal late.

2. Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this when delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties.

3. "Every day's delay must be explained" does not mean that a pedantic approach should be made. Why not every hour's delay, every second's delay? The doctrine must be applied in a rational common sense pragmatic manner.

4. When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay.

5. There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala fides. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk.

6. *It must be grasped that judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so."*

9. In Esha Bhattacharjee (supra) the Honourable Apex Court has culled out certain principles below paragraph No.21 and 29.

10. In view of the above, the case of the petitioner is squarely covered by the principles laid down by the Honourable Apex Court and he would be rendered remediless if the delay is not condoned.

11. In view of the above, this petition is allowed. The delay of five months is condoned by quashing and setting aside the order dated 16.4.2018 and Civil M.A. No.198 of 2016 stands allowed. By the consent of the respondents, the costs of Rs.3,000/- shall be deposited by the petitioner on/or before 20.10.2018, with the Government Medical College and Hospital, Aurangabad, through Medical Officer, High Court Dispensary, Aurangabad, either in cash or by Demand Draft (Demand Draft be drawn in the name of "Dean, Government Medical College and Hospital Dengi Samiti, Aurangabad").

12. The litigating sides shall appear before the trial Court on 29.10.2018 and the petitioner shall produce a receipt of deposit so made, before the trial Court as a per-condition. The trial Court shall

thereafter decide the application for restoration on it's own merits.

13. In the event, the trial Court restores the suit filed by the petitioner, all contentions of the Cantonment Board regarding maintainability of the suit shall be considered by the trial Court on its own merits.

14. Rule is made absolute in the above terms.

(RAVINDRA V. GHUGE, J.)

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