

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.11978 OF 2016
(Kishan Santoba Gadhve Vs. Amol Shivaji Gadhve)

Mr.G.R.Syed, Advocate for the petitioner.

Mr.Arvind Deshmukh, Advocate for the respondent.

(CORAM : RAVINDRA V. GHUGE, J.)

DATE : 01/02/2018

PER COURT :

1. The petitioner is aggrieved by the order dated 24/06/2016 passed by the Appellate Court, by which the application for condonation of delay of 2 years and 5 months, has been rejected. Consequentially, the restoration application filed for seeking restoration of Misc.Civil Application No.140/2006 for condonation of delay of 14 days in filing the first appeal, has been disposed of.

2. Mr.Deshmukh, learned Advocate appearing on behalf of the respondent has strenuously opposed this petition and prays that the same may be dismissed with heavy costs.

3. The record reveals that RCS No.272/1997 was decreed by judgment dated 07/11/2006. Since there was a delay of 14 days in filing the Regular Civil Appeal, the petitioner preferred MCA No.140/2006 seeking condonation of delay. Same was dismissed in

default on 04/05/2009. He, therefore, filed a restoration application and prayed for condonation of delay in MARJE No.110/2011.

4. Mr.Deshmukh is right in submitting that the petitioner has been negligent and does not seem to be interested in the litigation. He neglected his application for condonation of delay filed alongwith the Regular Civil Appeal. Even when it was dismissed in default, he has moved the present application after 2 years and 5 months. A separate application for restoration has not been filed.

5. The Law on condonation of delay requires no debate in the light of the judgments of the Hon'ble Apex Court in the matter of 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]. Unless malafides or laches or ulterior motives are attributed to the applicant seeking condonation of delay, it has to be assessed whether he would be rendered remediless if the delay is not condoned. In the instant case, no such laches are attributed. If the delay of 2 years and 5 months is not condoned, the petitioner will never be in a position to challenge the judgment and decree of the Trial Court and would be practically rendered defenceless. An irreparable harm and serious prejudice would be caused to him as the subject of the suit is an immovable property. If

the delay is condoned, the rigours of litigation suffered by the respondents herein can be reduced by imposing costs. Equities would, therefore, be balanced.

6. Considering the above and the reasons cited, MARJE No.110/2011 is allowed to the extent of condonation of delay on the condition that the petitioner shall deposit an amount of Rs.10,000/- as costs before the Appellate Court at Parbhani on or before 24/02/2018. This petition is, therefore, partly allowed and the impugned order dated 24/06/2016 is quashed and set aside.

7. Since the petitioner should have filed a separate application for seeking restoration of MCA No.140/2006 and has not so done, he shall file such an application containing the same contents as have been set out in Exhibit 1 in MARJE No.110/2011, alongwith the costs that he would deposit within the time frame. The said application would, therefore, be registered and would be considered on its own merits. After the costs are deposited, the respondent would be at liberty to withdraw the said costs without conditions, upon being identified by an Advocate and by furnishing address proof and also identity proof in the nature of the Election Commission Voter ID card or the Aadhar Card.

(RAVINDRA V. GHUGE, J.)