

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 13695 OF 2017

**DINKAR GOPALRAO KULKARNI
VERSUS
SHIVAJI PANDITRAO JOGDAND**

...

Advocate for Petitioner : Shri G.K.Naik Thigale

...

**CORAM : RAVINDRA V. GHUGE, J.
DATED : 25th JUNE, 2018.**

...

PER COURT :

1. On 28.11.2017, this Court had issued notice and in addition to the regular mode of service, had permitted the petitioner to serve the respondent by private notice. Despite service on the respondent, as none appeared, this Court issued notice of final disposal and again permitted the petitioner to serve the respondent privately in addition to the regular mode of service. Office report now indicates that the sole respondent has been served. Yet no appearance has been entered.

2. I have considered the submissions of the learned advocate for the petitioner who has challenged the order dated 16/08/2017 passed by the Appellate Court rejecting

application Exh.30 filed by the petitioner- original plaintiff in the counter claim in MARJI No. 240/2015.

3. The record reveals that the respondent herein, who is the appellant before the Appellate Court, has preferred the proceedings for seeking condonation of delay in filing the Regular Civil Appeal. While considering the application for condonation of delay, the Appellate Court had stayed the judgment of the Trial Court dated 27/01/2015 by which the counter claim was decreed. An amount of Rs. 57,500/- was to be deposited with 12 % interest by the appellant. Since this order was stayed, the petitioner moved Exhibit 30 seeking certain directions as the appellant was deliberately prolonging the hearing in the delay condonation matter.

4. In my view, the application for condonation of delay has to be expeditiously dealt with. If the delay is condoned by the Court, certain conditions can be imposed on the applicant. Exhibit 30 which was filed for reviewing the interim protection granted by an order under Exhibit 13, can be considered by the Appellate Court while dealing with the

delay condonation application, in the sense that if on its merits the delay condonation application is allowed and the appeal is to be registered and heard, the Appellate Court would impose conditions on the appellant during the pendency of the appeal in order to balance the equities.

5. Considering the above, this petition is partly allowed. The order below Exhibit 30 dated 16/08/2017 and dated 20/08/2015 below Exhibit 13 are quashed and set aside and both the applications are restored. The appellate Court shall consider the said applications Exhibit 30 and 13 while deciding MARJI No. 240/2015. As the petitioner alleges that the appellant is deliberately delaying the condonation of delay application, the Trial Court is directed to decide MARJI No. 240/2015 alongwith applications Exhibit 13 and 30 as expeditiously as possible and preferably on or before 31/12/2018.

(RAVINDRA V. GHUGE, J.)

shp/-