

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 2519 OF 2018

Sanjay Sudam Sarvade

... Petitioner

V/s.

Ld. Collector & District Magistrate, Sangli
at Sangli & Ors.

... Respondents

Mr. Kuldeep Nikam for the Petitioner.

Mr. S.H. Kankal, AGP for the Respondent Nos. 1 to 3.

CORAM : R.D. DHANUKA, J.

DATE : 09th JULY, 2018

P.C.:

. By this petition filed under Article 227 of the Constitution of India, the Petitioner has impugned the order dated 22.08.2017 passed by the learned Divisional Commissioner, Pune thereby refusing to condone the delay of 2 months 13 days in filing an Appeal.

2 Learned Counsel for the Petitioner invited my attention to the application for condonation of delay filed by the Petitioner and also the impugned order dated 22.08.2017. He submits that delay in filing the Appeal occurred due to various reasons recorded in the application of condonation of delay which has not been considered by the Appellate Authority and thus, the delay needs to be condoned and Petitioner shall be granted an opportunity to pursue the said Appeal on merits.

3 Learned AGP appearing for the Respondent tendered an Affidavit-in-Reply and submitted that the delay has not been sufficiently explained by the Petitioner. The delay of 2 months and 13 days in filing the Appeal is substantial period of time. It is further submitted that the Police Officer has submitted negative report in case of the Petitioner and on that ground also delay should not be condoned.

4 A perusal of the application for condonation of delay indicates that the Applicant has sufficiently explained the delay in filing Appeal. The learned Appellate Authority however has not considered the grounds mentioned in the application for condonation of delay and dismissed the application for delay on ground that delay was not sufficiently explained.

5 In my view, there is no substance in the contention of the learned AGP that the delay was not sufficiently explained by the Petitioner. Insofar as the contention of the learned AGP that the Police Officer has submitted the negative report on the application made by the Petitioner is concerned, the said ground cannot be considered for the purpose of considering the application for condonation of delay. The said issue can be raised by the Respondent before the Appellate Authority and is kept open.

6 For the aforesaid reasons, the impugned order dated 22.08.2017 passed by the Appellate Authority rejecting the application for condonation of delay is set aside. The delay of 2 months and 13 days in filing the Appeal is condoned.

7 The application filed by the Petitioner is restored on file before the learned Divisional Commissioner for hearing on its own merits.

8 It is made clear that this Court has not expressed any views on the Appeal filed by the Petitioner.

9 The Divisional Commissioner shall make an endeavour to depose of the matter expeditiously and not later than 4 months from the date of communication of this Order.

10 The Petitioner to appear before the learned Divisional Commissioner on 31.07.2018. If the date fixed by this Court is not convenient to the learned Divisional Commissioner, then the learned Commissioner shall convey the earliest convenient date in this Appeal to the Petitioner in advance.

11 Writ Petition is allowed in the aforesaid terms. No order as to costs.

(R.D. DHANUKA, J.)