

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 6596 OF 2015

Popat Babu Kute & Ors. .. Petitioners
vs.
State of Maharashtra & Ors. .. Respondents

Mr. Sharad Bhosale i/b. Mr. Dilip Bodake for Petitioners.
Mr. Prashant Patil for Respondent Nos. 4 to 7.

CORAM : M. S. SONAK, J.

DATE: 12 JUNE 2018

ORAL JUDGMENT :

1] Heard Mr. Sharad Bhosale, the learned counsel for the petitioners and Mr. Prashant Patil for respondent nos. 4 to 7.

2] The respondent nos. 1 to 3 have already been served and earlier the Government Pleader had also filed an appearance in this matter.

3] Taking into consideration the controversy involved and the order made on 12th August 2015, this petition is taken up for final disposal at the stage of admission itself.

4] At the outset, Mr. Bhosale, the learned counsel for the petitioners seeks leave to delete the respondent nos. 4 to 7 from the array of the respondents. He points out that the trial Court has already granted an injunction in favour of the petitioners and against

the respondent nos. 4 to 7. He points out that the respondent nos. 4 to 7 were not even impleaded as respondents in the misc. appeal filed by the petitioners before the Additional District Judge, Barshi since, the grievance of the petitioners in this appeal is restricted to the non grant of injunction in favour of the petitioners and against the respondent nos. 1, 2 and 3 herein.

5] Mr. Patil for the respondent nos. 4 to 7 states that he has no objection to the deletion of the respondent nos. 4 to 7. However, he submits that the petitioners should be liable to pay costs for impleading the respondent nos. 4 to 7 directly in this Court, without the respondent nos. 4 to 7 being parties before the appeal court.

6] On the issue of deletion of respondent nos. 4 to 7, there is merit in the contention of both the learned counsel. Accordingly, deletion is permitted but the petitioners are directed to pay costs of Rs.5,000/- in favour of the respondent nos. 4 to 7. Such costs to be deposited before the trial court within four weeks from today. Upon deposit, the respondent nos. 4 to 7 are at liberty to withdraw such costs unconditionally. Necessary amendment to the cause title to be carried out forthwith.

7] The challenge in this petition is to the impugned order dated

10th March 2015, by which the learned appeal court has declined to condone the delay of 71 days in instituting misc. appeal against the order dated 28th November 2014. The appeal court has held that there is no sufficient cause shown to explain the delay of 71 days in instituting the appeal.

8] From the perusal of the application seeking condonation of delay, it is seen that the petitioners had pleaded that on account of insufficient rainfall, the petitioners had to migrate to Pune. For this reason, they were unable to immediately contact their Advocate and institute an appeal. In my opinion, this constituted sufficient cause and there was really no reason to deny condonation of delay.

9] In matters of this nature, there is bound to be some lapse on the part of the parties seeking condonation of delay. However, that by itself, is not a ground to non-suit such party. If the cause shown, does not smack of *mala fides* or is not put-forth as a dilatory strategy, courts are expected to show utmost consideration to such parties. The cause shown in the present case, does not smack of *mala fides*. The delay is also not substantial. Accordingly, the delay was required to be condoned no doubt subject to imposition of some reasonable costs.

10] Accordingly, the impugned order dated 10th March 2015 is hereby set aside. The delay in institution of the appeal is hereby condoned subject to the petitioners paying costs of Rs.1,000/- to the respondent nos. 1, 2 and 3. Such costs to be deposited within four weeks from today. If the costs are deposited, the respondent nos. 1, 2 and 3 are permitted to withdraw the same unconditionally. However, if the costs are not deposited, then this petition shall be deemed to have been dismissed with costs of Rs.6,000/-.

11] The petitioners and the respondent nos. 1, 2 and 3 to appear before the appeal court on 16th July 2018, if by 12th July 2018 the petitioner deposits the amount of costs as directed by this order.

12] The petitioners are directed to serve an authenticated copy of this order upon the Government Advocate appearing for respondent nos. 1, 2, and 3.

13] Rule is made absolute to the aforesaid extent.

14] All concerned to act on basis of authenticated copy of this order.

(M. S. SONAK, J.)