

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

WRIT PETITION No. 1559 OF 2013

Mahendra Velji Shah & Ors.

...Petitioners

Versus

Maharashtra Industrial Development
Corporation & Anr.

...Respondents

.....

Mr.Balasaheb Deshmukh for the Petitioners.

Mr.Pranar Thakur i/b. Little & Co. for the Respondents.

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**CORAM: MRS.MRIDULA BHATKAR, J.
DATED: JUNE 06, 2018**

P.C. :

1. This Writ Petition is directed against the order dated 1st December, 2012 passed by the learned Civil Judge, Junior Division, Vashi thereby allowing the application below Exhibit 24 in Regular Civil Suit No. 724 of 2012. The petitioners are the original plaintiffs and the respondents are the original defendants in the suit.

2. The learned Counsel for the petitioners has submitted that without prayer of condonation of delay, the application of the defendants for taking written statement on record i.e., Exhibit 24 was allowed by the learned Judge of the trial Court by passing

cryptic order. The learned Judge of the trial Court has not mentioned any reason to condone the delay. In the application, the defendants i.e., M.I.D.C has mentioned that the plaintiffs did not provide CD, which is referred in the plaint and, therefore, the defendants could not prepare the draft of the written statement. He has further submitted that the statement made by the defendants is false, as the CD has already been furnished to the defendants along with the plaint. He has further submitted that the defendants have made a false statement for condoning the delay and for taking written statement on record. The learned Judge of the trial Court has no jurisdiction to pass an order in the absence of the prayer and there is no exceptional reason. He has further submitted that the order of condonation of delay was passed behind their back when they have filed an application below Exhibit 28 for an adjournment, as their Advocate was out of station due to his personal difficulty and the said application was allowed. Under such circumstances, the learned Judge of the trial Court ought not to have condoned the delay and passed the order on the same day. In support of his submission, he has relied on the judgments of the Supreme Court in the case of ***Mohammed Yusuf Versus Faj Mohammad*** reported in ***2008 Lawpad (SC)***

1001 and also in the case of ***Ragho Singh Versus Mohan Singh*** reported in **2000 Lawpad (SC) 1272**. He has further submitted that there should be an exceptional reason to grant delay. If at all there is no prayer for condonation of delay, then the Court has no power to condone the delay.

3. The learned Counsel for the respondents has submitted that there was a prayer in the application for condonation of delay. He has further submitted that no false statement was made or reason was given in the application by the defendants for taking written statement on record. He has further submitted that the reasons are mentioned in the affidavit filed by the defendants i.e., M.I.D.C.

4. Heard submissions. Perused the impugned order. The ratio laid down in the case of ***Mohammed Yusuf*** (*supra*) is not applicable to the present case. In the present case, there is a prayer of condonation of delay in paragraph no.3 of the application below Exhibit 24. In the present case, the defendants have filed the application for taking written statement on record wherein they have mentioned that there was delay in giving detail instructions to the Advocate. The defendants i.e., M.I.D.C is a public body and it is necessary to seek approval to the draft of the written statement

from the Legal Department as well as the other higher authorities of the defendants. It is further submitted that there are specific allegations in the plaint and there is a reference of CD and, therefore, it was very much required for the defendants to seek instructions on the contents of the CD. There is a delay of 46 days. Considering the nature of the business and procedure of the defendants i.e., M.I.D.C., I am of the view that the delay of 46 days is to be condoned with the order of imposing the costs on the defendants. It is necessary to mention that the learned Judge of the trial Court has granted adjournment application as a last chance. However, on the same day, the learned Judge of the trial Court has passed the order of allowing the application for condonation of delay which he should not have been passed on that day without hearing the learned counsel for the plaintiffs.

5. The learned counsel for the plaintiffs has prayed that the matter be remanded back to the trial Court again for the decision on this application. If this order would have been come up to decide immediately i.e., in the year 2012, then the order of remand would have been appropriate. However, the said order of 1st December, 2012 come up for hearing today and considering the

time gap, it is not appropriate to pass the order of remand. Moreover, the submissions and objections raised are taken into consideration by this Court. The order of condonation of delay is hence maintained with condition of costs of Rs. 10,500/-, which is to be deposited in the trial Court within a period of four weeks from today by the defendants i.e., M.I.D.C and it is to be distributed equally amongst the original plaintiffs. The trial Court to proceed with the matter.

6. With this, Writ Petition is disposed of.

(MRIDULA BHATKAR, J.)