

psv

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

CIVIL WRIT PETITION NO.2279 OF 2017

Sayyad Isak Babulal	..Petitioner
Vs.	
Shree Shitala Devi Mandir Trust	..Respondent

Mr.Rahul S. Kadam for Petitioner.
Mr.S.S. Hardikar for Respondent.

CORAM : G.S. KULKARNI, J.

DATE : 30th JANUARY, 2018

P.C.:

Heard learned Counsel for the parties.

2. Challenge in this petition is to an order dated 6th October 2016 passed by the learned District Judge, Pune, whereby an application as made by the petitioner praying for condonation of delay in preferring the restoration application for restoration of Miscellaneous Civil Application No.721 of 2013 stands rejected. There was a delay of 63 days in filing the said application.

3. A perusal of the impugned order shows that the petitioner was not diligent in pursuing the proceedings in view of the dismissal of the earlier application as also the dismissal of the main proceedings.

4. However, having considered the facts and circumstances of the case and in the interest of justice, it would be appropriate that the principal dispute between the parties which is subject matter of Civil

Appeal No.809 of 2006 itself is decided. The delay not only in filing the Civil Miscellaneous Application No.356 of 2016 is condoned, but also the application of the petitioner for restoration of the of Miscellaneous Civil Application No.721 of 2013 is granted. However, this is required to be granted with certain conditions.

5. It would be in the interest of justice and considering the facts and circumstances of the present case, the petitioner is directed to deposit before the appellate Court 50% of the arrears of compensation due and payable upto 30th January 2018. The arrears be deposited within a period of 6 weeks from today. On such deposit being made, the Civil Appeal No.809 of 2006 filed by the petitioner shall stand restored and shall taken up by the learned District Judge for adjudication on merits of the rival pleas. The appeal being of the year 2006, it be considered as expeditiously as possible by the learned District Judge. The learned Counsel for the respondent on instructions also does not have any objection to the above course of action.

6. Subject to above directions, the impugned order dated 6th October 2016 is required to be set aside. It is, accordingly, set aside. Needless to observe that there shall be no further extension of time to deposit the amount on any count whatsoever.

7. Writ petition is accordingly allowed in the above terms. No costs.

[G.S. KULKARNI, J.]