

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

CIVIL WRIT PETITION NO.7896 OF 2016

Jamaluddin Chandubhai Tingli ...Petitioner
Versus
The Director, Defence Estates, SC, Pune and Anr. ...Respondents

Mr.A.U.Patil, for the Petitioner.

Mr.K.J.Presswalla a/w Mr.Sandeep Goyal i/b Mulla & Mulla & Craigie Blunt & Caroe, for the Respondent No.2.

CORAM : REVATI MOHITE DERE, J.

DATE : 23rd AUGUST, 2018

P.C. :

1. Heard learned counsel for the parties.
2. Rule. Rule is made returnable forthwith with the consent of the parties and is taken up for final disposal. Mr.Presswalla waives service on behalf of the contesting Respondent No.2.
3. By this petition, the Petitioner has impugned the Order dated 15th April, 2016, passed by the Director, Defence Estates, Appellate

Authority, rejecting his Appeal, being Appeal No.PNA/25/2015.

4. Learned Counsel for the Petitioner submits that sufficient cause was shown to condone the delay of 21 days caused in filing the Appeal. He submitted that the impugned order dated 15th April, 2016, refusing to condone the delay, be quashed and set aside and the Appellate Authority be directed to decide the Appeal on merits.

5. Learned Counsel for the Respondent No.2 opposes the Petition and submits that no interference is warranted in the impugned order dated 15th April, 2016.

6. Perused the papers including the impugned order dated 15th April, 2016. Admittedly, the Appeal has not been decided on merits by the Director, Defence Estates, Appellate Authority and the Appeal has been dismissed only on the ground of delay in filing the Appeal before the Appellate Authority.

7. A few dates as are relevant are as under:-

On 8th May, 2015, the Competent Authority issued a show-cause-notice to the Petitioner under Section 248 of the Cantonment Act (hereinafter referred to as 'the said Act'), which notice was received by the Petitioner on 10th May, 2015. Under Section 248 of the Cantonment Act, the Petitioner was required to file an Appeal within 30 days i.e. on or before 11th June, 2015. On 26th June, 2015, the Competent Authority issued a demolition notice under Section 320 of the said Act. On 2nd July, 2015, the Petitioner filed an Appeal under Section 340 of the said Act along with a prayer for condonation of delay of 21 days in filing the said Appeal. In the Appeal filed by the Petitioner, the Petitioner in paragraph 4 had averred that his son had met with an accident and was under medical treatment and hence he could not contact his Advocate during the period within which the Appeal was to be filed. He has further averred that he was given notice dated 26th June, 2015 under Section 320 of the Cantonment Act for demolition of the said property on 30th June, 2015, pursuant to which, he consulted his Advocate and filed his Appeal. He has further stated that due to the accident of his son, he could not file the Appeal within the limitation as contemplated under Schedule – V of the Cantonment Act and that the

said delay of 21 days caused in filing the Appeal be condoned.

8. The Appellate Authority vide order dated 15th April, 2016, rejected the prayer for condonation of delay in filing the Appeal. It was observed that there was no justifiable reason for condoning the delay.

9. Having perused the papers and having heard the parties, I am of the opinion that the Petitioner had shown sufficient cause to condone the delay. The delay can neither be said to be intentional nor deliberate and as such it would not be in the interest of justice to take a hyper-technical view.

10. Considering the aforesaid, the Petition is allowed and the impugned Order dated 15th April, 2016, passed by the Respondent No.1 - Director, Defence Estates, SC, Pune, by which the Appellate Authority rejected the prayer for condonation of delay in filing the Appeal being Appeal No.PNA/25/2015, is quashed and set aside. The Appeal is restored back to its original file.

11. Accordingly, the delay of 21 days caused in filing the Appeal being Appeal No.PNA/25/2015, before the Appellate Authority, stands condoned. The Appellate Authority, shall now decide the Appeal, on its own merits, as expeditiously as possible. The parties to co-operate with the expeditious disposal of the Appeal.

12. Rule is made absolute in above terms.

13. The status-quo granted by this Court vide order dated 30th May, 2016, to continue, till the disposal of the Appeal, by the Appellate Authority.

14. The Petitioner to pay costs of Rs.5,000/- to the Respondent No.2, within two weeks from today.

15. All concerned to act on the authenticated copy of this order.

(REVATI MOHITE DERE, J.)