

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

WRIT PETITION NO.10191 OF 2017

Jaycee Developers	..	Petitioner
Vs.		
Jatin M.Sheth & Ors.	..	Respondents

Mr.Sanjay Jain a/w Ms.Gauri Mestha i/by M/s.L.J.Law for the petitioner.
Mr.Dani, Senior Advocate a/w Mr.Tamboly a/w Ms.Aditi Bhansali i/by
M/s.Vashi and Vashi for the respondent no.1.
Mr.S.H.Kankal, AGP for the respondent no.5.

CORAM : R.D. DHANUKA, J.
DATE : 17th July 2018

P.C.:

. By this petition filed under Article 227 of the Constitution of India, the petitioner has impugned the order dated 31st May 2017 passed by the respondent no.2 in review application filed by the respondent no.1 on several grounds. First ground of challenge is that though the respondent no.1 had filed an application for seeking condonation of delay in filing the Review Application No.2616/854/C No.31/J-3 and though the application for condonation of delay was opposed by the petitioner, the learned Minister without considering the application for condonation of delay has allowed the review application filed by the respondent no.1.

2. Mr.Dani, learned senior counsel for the respondent no.1 fairly admits that in the impugned order dated 31st May 2017, there is no reference to the application for condonation of delay filed by his client.

3. Since the learned Minister has not decided the application for condonation of delay before deciding the review application on merit, the impugned order dated 31st May 2017 deserves to be set aside on this ground alone. The impugned order dated 31st May 2017 is accordingly quashed and set aside. The Review Application No.2616/854/C No.31/J-3 is restored to file along with the application for condonation of delay filed by the respondent no.1 on 27th February 2015.

4. Learned Minister shall decide the application for condonation of delay first after hearing both the parties and pass an appropriate order thereon. Learned Minister shall pass an order on the application of condonation of delay without being influenced by the observations made and the conclusions drawn in the impugned order dated 31st May 2017.

5. Since this Court has set aside the impugned order only on the ground that the application for condonation of delay was not considered by the learned Minister before deciding the review application, this Court has not gone into the other issues raised by the petitioner in this writ petition. All contentions of both the parties on merit are kept open.

6. If the learned Minister condones the delay in filing the review application, he shall dispose of the review application on merit without being influenced by the observations made and the conclusions drawn in the impugned order dated 31st May 2017.

7. Writ petition is allowed in aforesaid terms. There shall be no order as to costs. Parties are directed to appear before the learned Minister on 2nd August 2018 at 11.00 a.m. Learned Minister shall hear the parties on the application for condonation of delay on the next date as fixed by this Court. An appropriate order in the said application for condonation of delay shall be passed within one week from the date of hearing the parties. Ad-interim relief granted by this Court on 22nd August 2017 to continue till 16th August 2018. Parties would be at liberty to apply for continuation of ad-interim order or vacating the ad-interim order after the order on the application of the condonation of delay is passed. Parties to act on the authenticated copy of this order.

R.D. DHANUKA, J.