

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

WRIT PETITION NO. 21 OF 2017

Dr.Mangesh Ramchandra Mantri & Anr.	...	Petitioners
V/s.		
Sadashiv Dattatray Kulkarni & Ors.	...	Respondents

- Mr.Aditya S. Desai for the Petitioners.
- Mr.A.A. Alaspurkar, A.G.P. for Respondent-State.

CORAM : DR.SHALINI PHANSALKAR-JOSHI, J.

DATE : 28th MARCH, 2018.

P.C. :

1] Heard learned counsel for the Petitioners and learned counsel for the Respondent-State.

2] By this Writ Petition, filed under Article 227 of the Constitution of India, the Petitioners are challenging the order dated 4th July 2016 passed by the District Judge-2, Islampur, thereby allowing Civil Miscellaneous Application No.73 of 2015, which was filed by the Respondent-Grampanchayat for condonation of delay in preferring the Appeal against the Judgement and Order dated 9th August 2012 passed by the Civil Judge Senior Division, Islampur, in Regular Civil Suit No. 351 of 2007.

3] The submission of learned counsel for the Petitioners is that the delay is of about 3 years and 2 months and no sufficient explanation is offered by the Respondent-Grampanchayat; hence it was not at all proper on the part of the Appellate Court to condone such delay.

4] However, in my considered opinion, the Appellate Court has rightly condoned this delay, so that the matter can be decided on merits, which has already been earlier decided without “Written Statement” of the Respondent-Grampanchayat. The interests of justice are always advanced if the matter is decided on merits instead of on any technical grounds. The Respondent-Grampanchayat being a public body, the Appellate Court has rightly held that the delay, though of a substantial period and strictly speaking no sufficient explanation is offered, deserves to be condoned and accordingly, condoned the same, subject to the costs of Rs.5000/-. The costs are already deposited by the Respondent-Gramapanchayat in the Appellate Court.

5] Hence, in my considered opinion, when the Appellate Court has exercised its discretion, this Court in writ jurisdiction should not interfere in exercise of that the discretion; especially when the discretion is exercised to advance substantive cause of justice.

6] At the most, in order to protect the rights of the Petitioners, it would be just and appropriate to direct the Appellate Court to decide the Appeal as expeditiously as possible and preferably within six months from the receipt of this order.

7] With this direction, the Writ Petition stands dismissed.

[DR.SHALINI PHANSALKAR-JOSHI, J.]