

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.860 OF 2018

**GAUTAM PANDURANG BHALERAO
VERSUS
SHAIKH SAJJAN SK MAULA AND ANOTHER**

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Advocate for the Petitioner : Shri J. M. Murkute
Advocate for Respondent No.1 : Shri S. K. Chavan

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CORAM : RAVINDRA V. GHUGE, J.

DATED : 18th MARCH, 2019.

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PER COURT :

1. Despite service of court notice on respondent No.2, none appears.

2. The petitioner original defendant in RCS No. 8/2005 is aggrieved by the impugned order dated 03/11/2016 passed by the Trial Court, by which, Civil M.A. No. 4/2013 filed by the plaintiff seeking condonation of delay and restoration of the suit which was dismissed in default, has been allowed.

3. A strenuous submission of the petitioner is that the delay of about 26 months and 7 days has been condoned by the Trial

Court by imposing cost of Rs. 1500/-. Meagre costs have been awarded and the suit has been restored. Reasons assigned for the delay caused are not sufficient and the impugned order is rendered perverse and erroneous.

4. The learned Advocate for the plaintiff submits that he is a labourer residing in Mumbai. He is living in abject poverty. He used to contact his advocate for prosecuting the suit. In November 2012, he learnt through the learned Advocate that the suit was dismissed in default. He rushed to Aurangabad and obtained certified copies on 13/12/2012 and moved Civil M.A. No. 4/2013.

5. He, therefore, submits that laches cannot be attributed to his conduct as he was living at a far off place like Mumbai and was working as a labourer. He could not afford to travel frequently from Mumbai to Gangakhed in District Parbhani. His poverty and difficult life should not be a cause for dismissing his suit. If the suit is not restored, he would be rendered remediless. He then submits that the suit was restored and was prosecuted and today is at the stage of

advancing final arguments.

6. I find that in matters of condonation of delay, the law laid down by the Honourable Apex Court in the matters of *Collector, Land Acquisition, Anantnag v/s. Katiji, AIR 1987 SC 1353* and *Esha Bhattacharjee v/s Managing Committee of Raghunathpur Nafar Academy, (2013) 12 SCC 649* would be squarely applicable. The plaintiff does not gain any advantage by delaying his suit. Laches are not attributed to his conduct. He would be remediless if the suit is not restored.

7. *Insofar* as the imposition of costs is concerned, I do find that the Trial Court has imposed nominal costs of Rs. 1500/- to condone the delay of 26 months and 7 days.

8. Considering the above, this petition is disposed off. The amount of costs deposited by the plaintiff before the Trial Court can be unconditionally withdrawn by the defendant. Additional costs of Rs. 1,000/-, is being donated for the treatment of the poor patients at Aurangabad in view of the statement made by the defendant. The plaintiff shall,

therefore, deposit the said amount of Rs. 1,000/-, on or before 01/04/2019, with the Government Medical College and Hospital, Aurangabad, **through Medical Officer, High Court Dispensary, Aurangabad**, either in cash or by Demand Draft (Demand Draft be drawn in the name of **“Dean, Government Medical College and Hospital, Aurangabad Dengi Samiti”**).

(RAVINDRA V. GHUGE, J.)

shp/-