

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.9786 OF 2019
(Bhausahab s/o Madhavrao Funde and others Vs. Yamunabai w/o
Marotirao Pingale and others)

Mr.S.S.Thombre, Advocate for the petitioners.
Mr.V.P.Sawant, Advocate for respondent Nos. 1 to 4.

(CORAM : Ravindra V.Ghuge, J.)

DATE : 22/08/2019

PER COURT :

1. The petitioners/original appellants in MCA No.34/2016 are aggrieved by the order dated 01/02/2019 passed by the Appellate Court by which Civil MA No.221/2017, seeking restoration of the MCA, has been rejected.
2. Leave to delete respondent Nos. 5, 6 and 7 is granted as they are formal parties. Deletion be carried out.
3. The record reveals that the misc.civil appeal was dismissed in default on 09/11/2017. Civil Misc.Application was filed on 05/12/2017, seeking restoration within 30 days of the DID order. The Appellate Court has concluded that because the petitioners were

absent earlier in the MCA, even if they have filed the MCA within 30 days, reasons are not sufficient to re-admit the appeal.

4. I find that the Appellate Court has lost sight of the law laid down by the Hon'ble Apex Court in the matter of Collector, Land Acquisition Anantnag and another Vs. Mst. Katiji and others [(1987) 2 SCC 107] and Esha Bhattacharjee Vs. Managing Committee of Raghunathpur Nafar Academy and others [2013(12) SCC 649]. The observations of the Hon'ble Apex Court in paragraph No.3 in Collector, Land Acquisition (supra), read as under :-

"1.

2.

3.

4. *When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay.*

5. *There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala fides. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk.*

6. *It must be grasped that judiciary is respected not on account of its power to legalize injustice on technical grounds but*

because it is capable of removing injustice and is expected to do so."

5. I am of the view that in such matters, the Court is expected to take a pragmatic view rather than following a pedantic approach. The delay in conducting the MCA is neither deliberate nor inordinate. In fact, the Civil Misc.application is filed within limitation, on the 26th day, to be precise, from the date of the MCA being dismissed in default.

6. I find that costs can be imposed on the petitioners. The learned Advocate for the 15 petitioners submits that he is willing to donate some amount for the treatment of poor patients as a bonafide gesture on the part of the petitioners. The learned Advocate for respondent Nos. 1 to 4 submits that the amount can be donated for a public cause.

7. In view of the above, this petition is allowed. The impugned order dated 01/02/2019 is quashed and set aside and CMA No.221/2017 stands allowed. MCA No.34/2016 stands restored to the file of the learned District Judge-7, Beed.

8. The petitioners and respondent Nos. 1 to 4 shall appear before

the concerned Court on 16/09/2019. The Appellate Court shall issue notice to the remaining litigants in the matter. After all the parties appear, the Appellate Court would list the Misc.Civil Appeal on a particular date as per it's convenience and all the parties shall advance their oral final arguments in this matter without seeking an adjournment.

9. These petitioners shall deposit a total amount of Rs.10,000/- (Rs.Ten thousand only) in this Court on or before 05/09/2019. The Registry of this Court shall transfer the said amount to the Social Project "**Shantivan**", Arvi, Tq.Shirur Kasar, District Beed in the name of "**Bhavani Vidhyarthi Kalyan Pratishtan, Arvi**") by way of electronic transfer (State Bank of India, Branch Shirur (Kasar), Account No.33446000963, IFSC Code : SBIN0005995) and shall report compliance.

(**Ravindra V.Ghuge, J.**)