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

**948 CIVIL APPLICATION NO.10646 OF 2018
IN FAST/22602/2018**

MOHD.AZEEMODDIN MOHD. HAMIDODDIN
VERSUS
THE STATE OF MAHARASHTRA AND ANR

...

Advocate for Applicant : Mr. Shaikh Mazhar A.
Jahagirdar

AGP for Respondents : Mr. A.M. Phule
Advocate for Respondent No.2 : Mr. S.J. Kazi

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**CORAM : P.R. BORA, J.
DATED : 29th JANUARY, 2019.**

PER COURT:-

. Heard Shri Jahagirdar, the learned counsel appearing for the applicant and Shri S.J Kazi, the learned counsel appearing for respondent no.2.

2. The delay of 606 days has occurred in filing the appeal. It is the contention of the applicant that initially he had preferred Writ Petition No.4112 of 2018 challenging the impugned order, however, when it was pointed out that under the provisions of Guardian and Wards Act, 1980, the appeal would lie against the impugned order and the writ petition was not the efficacious remedy, the writ petition was disposed of by this Court vide order passed on 17.07.2018 giving liberty to the

(2)

present applicant to take up appropriate proceedings. The learned counsel submits that after passing of the said order within 15 days the present appeal has been filed. In the circumstances, the learned counsel has prayed for condoning the delay which has occasioned in filing the present appeal.

3. The learned counsel Shri S.J. Kazi has opposed for condoning the delay stating that intentionally the writ petition was filed and that was also not timely withdrawn by the present applicant till the time it was brought to the notice of the Court that writ petition would not be maintainable. The learned counsel further submits that there are no bonafides in the present application and hence the application deserves to be rejected.

4. After having considered the submissions made by the learned counsel appearing for the parties and on perusal of the material on record, it appears to me that the applicant had availed the remedy of filing the writ petition against the impugned order bonafide and the moment it was

(3)

brought to the notice that the writ petition would not lie and the first appeal would be the appropriate remedy, the petition was disposed of and within 15 days thereof, the present appeal has been filed. In view of the fact the applicant was agitating on wrong forum, the delay cannot be said to be caused deliberately. I am, therefore, inclined to condone the delay. Hence, the following order:

ORDER

- i) The delay occurred in filing the appeal is condoned. The appeal be registered in accordance with law.
- ii) The civil application for delay stands disposed of.
- iii) After registration of the appeal, issue notice to the respondents. Advocate Shri S.J. Kazi waives notice for respondent no.2. The learned AGP Shri Phule waives notice for respondent no.1. Service complete.
- iv) List the appeal for further consideration after four weeks.

(P.R. BORA, J.)