

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.11625 OF 2019

UDHAV RAGHUNATH KHEDKAR AND ANOTHER
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

Mr.V.A.Dhakne, Advocate for the petitioners.
Mr.S.W.Munde, AGP for respondent Nos.1 and 2.
Mr.P.P.Khandagale Patil, Advocate for respondent No.3.

(CORAM : Ravindra V.Ghuge, J.)

DATE : 11/12/2019

PER COURT :

1. On 23/09/2019, I had passed the following order :-

“1. The petitioner / original appellant before the learned MRT is aggrieved by the impugned order dated 01/03/2019, by which, his application for seeking condonation of 48 days delay caused in filing the application for restoration of Appeal No. 19/A/2014/Beed, has been rejected.

2. The petitioners have mentioned in paragraph 10 of the memo of the petition that they had challenged the order dated 29/05/2013 passed by the Deputy Collector and the order dated 15/04/2014, in Appeal No. 19/A/2014/Beed. Written notes of arguments were submitted before the MRT and the matter was heard finally. No order was passed as the post of Member MRT was vacant. The petitioners did not notice the dates 22/04/2016 and 13/05/2016 and the matter was dismissed for non prosecution on 13/05/2016.

3. It is then submitted that a restoration application was filed and it was allowed on 06/12/2017. The learned Advocate tenders an apology and submits that there is some confusion in paragraph 10. The parties had argued finally before the learned MRT on 04/10/2017 and the restoration application was allowed on 06/12/2017. As the petitioners were not aware of the restoration, they remained absent on 18/12/2017, 01/02/2018, 27/03/2018 and 26/04/2018. The Appeal was, therefore, dismissed in default for the second time on 26/04/2018.

4. I find that the learned MRT has considered the above aspect and after concluding that the petitioners have no interest in the matter, has rejected the application for condonation of delay of 48 days by the impugned order dated 01/03/2019.

5. The learned Advocate for the petitioners submits that the petitioners would be rendered remediless if the impugned order is sustained. An agricultural land which is the source of earning of livelihood is the subject matter. The petitioners are husband and wife, who are more than 40 years of age. They are willing to deposit any amount of costs if this Court considers this petition and grants a last chance.

6. I called upon the petitioners to state whether they are willing to deposit a total amount of Rs. 25,000/- as costs which might satisfy the contesting respondent as the Appeal has been dismissed in default on two occasions over a period of about 2 years. He submits that the petitioners are willing to deposit Rs. 20,000/- in this Court.

7. Issue notice to the respondents, returnable on 18/11/2019. The learned AGP waives service for respondent Nos. 1 and 2. This notice is being issued on the condition that the petitioner shall deposit an

amount of Rs. 20,000/- in this Court on or before 16/10/2019, failing which, this matter shall be dismissed by the Registry without reference to the Court on 17/10/2019.

8. The petitioner shall supply copies of the petition paper book for serving respondent Nos. 3 and 4, on or before 04/10/2019, failing which this petition shall stand dismissed without reference to the Court on 05/10/2019.”

2. The learned Advocate appearing on behalf of the contesting respondent No.3 has strenuously opposed this petition. He submits that the delay of 48 days is deliberate and intentional. Though the period appears to be very short, the conduct of the petitioners would dis-entitle them from seeking condonation of delay.

3. I find that the petitioners have already deposited Rs.20,000/- in this Court in the light of the above order passed on 23/09/2019. Considering the delay and the submissions of respondent No.3, I find that costs of Rs.7,000/- can be granted to respondent No.3. Respondent No.4 has not appeared despite service of Court notice and he is therefore dis-entitled from receiving costs. The petitioners agree to donate an amount of Rs.3,000/- to the orphans who have lost their parents (Farmer's suicide) and are residing with “Shantivan”, Arvi, Tq.Shirur Kasar, Dist. Beed

4. In view of the above, this petition is allowed. The impugned order dated 01/03/2019 is quashed and set aside. Delay of 48 days is condoned. The application for restoration of appeal No.23/D/2018 is allowed. Appeal No.19/A/2014/Beed is expedited so as to be decided on or before 30/06/2020.

5. Respondent No.3 Ambadas will withdraw Rs.7,000/- as costs without conditions. Registry shall transmit Rs.3,000/- to the orphanage home i.e. "Shantivan", Arvi, Tq.Shirur Kasar, Dist. Beed, in the name of "**Bhavani Vidhyarthi Kalyan Pratishthan, Arvi**" by way of electronic transfer (State Bank of India, Branch Shirur (Kasar), Account No.33446000963, IFSC Code : SBIN0005995) and shall report compliance. The remainder amount of Rs.10,000/- with accrued interest, if any, shall be returned to the petitioners and can be withdrawn by petitioner No.1 on proper identification by the learned Advocate.

(Ravindra V.Ghuge, J.)