

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

FIRST APPEAL NO.2850 OF 2017

- 1 Sunil Eknath Bajaj,
Age 52 yrs., Occ. Business,
R/o N-4, CIDCO, Aurangabad.
- 2 Manoj Ramnarayan Rathi,
Age 48 yrs., Occ. Business,
R/o Surana Nagar, Aurangabad.
- 3 Gopal Mithulal Navandar,
Age 52 yrs., Occ. C.A.,
R/o N-3, CIDCO, Aurangabad.

... **Appellants.**

... **Versus** ...

- 1 Maheshwari Seva Trust,
Rangar Galli, Aurangabad.
- 2 Kishorilal Ramnath Dhoot,
Age : major, Occ. Business,
R/o Vishrambag Colony,
Padampura, Aurangabad.
- 3 Rajkumar Nandlal Dhoot,
Age 60 yrs., Occ. Business,
R/o Paithan road, Aurangabad.
- 4 Bhikchand Gulabchand Chichani,
Age : major, Occ. Business,
R/o Raja Bazar, Aurangabad.
- 5 Kashinath Shriramji Darak,
Age : major, Occ. Business,
R/o Shankar Nagar, Tilak Nagar,
Aurangabad.

- 6 Subhash Lalchandji Darak,
Age : major, Occ. Business,
R/o 59, Town Centre,
Opp. MGM Hospital, Aurangabad.
- 7 Jugalkishor Chhaganlalji Tapdiya,
Age 65 yrs., Occ. Business,
R/o Pink Palace, Nirala Bazar, Aurangabad.
- 8 Ganesh Shankarlalji Darak,
Age : major, Occ. Business,
R/o Cantonment, Aurangabad.
- 9 Chandrakant Hanumandasji Malpani,
Age : major, Occ. Business,
R/o Suraj, 148, N-1, CIDCO, Aurangabad.
- 10 Sunil Hanumandasji Malpani,
Age : major, Occ. Business,
R/o 6, Surana Nagar, Behind Gurunanak,
Petrol Pump, Jalna road, Aurangabad.
- 11 Shrikant Raghunathji Maniyar,
Age : major, Occ. Service,
R/o Plot No.60, Raghu Ratna,
Jyoti Nagar, Aurangabad.
- 12 Sachin Rajendra Nagori,
Age : major, Occ. Business,
R/o N-1, CIDCO/ or ABC complex,
Adalat road, Aurangabad.
- 13 Manish Radhavallabhji Dhoot,
Age : major, Occ. Business,
R/o New Youth Hostel or
Dhoot Motors, Adalat road, Aurangabad.
- 14 Sanjay Chandulalji Kalantri,
Age : major, Occ. Business,
R/o Pushpnagari, Aurangabad.

- 15 Rameshchandra Ramnathji Dhoot,
Age : major, Occ. Business,
R/o Govind Nagar, Station Road,
Aurangabad.
- 16 Lalit Ramgopal Rathi,
Age : major, Occ. Business,
R/o “Rati Tower”, Jyoti Nagar road,
Aurangabad.
- 17 Suyog Sunilji Machhar,
Age : major, Occ. Business,
R/o Plot No.41, Jalna road,
Sindhi Colony, Aurangabad.
(Deleted as per order dated 06.06.2019.)
- 18 Naresh Gangabhishanji Sikchi,
Age : major, Occ. Business,
R/o Plot No.5, Deshmukh Nagar,
Surana Nagar, Aurangabad.
- 19 Kamlesh Kishorilalji Dhoot,
Age : major, Occ. Business,
R/o Vishrambag Colony, Padampura,
Near Hotel Panchwati, Aurangabad.
- 20 Dnyanprakash Kanhailalji Modani,
Age : major, Occ. Business,
R/o Near Ram Mandir,
Samarth Nagar, Aurangabad.
- 21 Santosh Gangadharji Chichani,
Age : major, Occ. Business,
R/o 4, B, Rathi Tower, Dashmesh Nagar,
Aurangabad.
- 22 Suresh Shrikishanji Kabra,
Age : major, Occ. Business,
R/o 20, Swatantra Sainik Colony,
Aurangabad.

- 23 Pravin Satyanarayan Mundada,
Age : major, Occ. Business,
R/o Aurangabad.
- 24 Sanjay Mathuradas Rathi,
Age : major, Occ. Business,
R/o Vyankatesh Nagar,
Baijipura, Aurangabad.
- 25 Jainarayan Devichandji Baheti,
Age : major, Occ. Business,
R/o Devi Parwati, 5/A, N-4,
Sector F, CIDCO, Aurangabad.
(Deleted as per order dated 06.06.2019.)
- 26 Praful Lalchandji Malani,
Age : major, Occ. Business,
R/o Raza Bazar, Aurangabad.
- 27 Omprakash Mohanlalji Kabra,
Age : major, Occ. Business,
R/o Govbind Nagar, Station Nagar,
Aurangabad.
- 28 Sushil Subhashji Dhoot,
Age : major, Occ. Business,
R/o Ashtavinayak Elclave,
Near Maya Hotel,
Bansilal Nagar, Aurangabad.
(Deleted as per order dated 06.06.2019.)
- 29 Shivnath Gulabchand Rathi,
Age : major, Occ. Business,
R/o Rathi Sadan, N-4, MSEB Power Station,
CIDCO, Aurangabad.
- 30 Arun Dhondiram Totla,
Age : major, Occ. Business,
R/o "Totla Niwas", Gulmandi,
Aurangabad.

- 31 Vijay Gopikishanji Malani,
Age : major, Occ. Business,
R/o Malani Traders, Jalna road,
Opp. SFS School, Aurangabad.
- 32 Satyanarayan Madanlalji Chandak,
Age : major, Occ. Business
R/o Opp. Telephone Bhavan,
Ajab Nagar, Aurangabad.
- 33 Gaurishankar Harinarayanji Tapdiya,
Age : major, Occ. Business,
R/o Sant Eknath Housing Society,
Opp. Akashwani, Aurangabad.
- 34 Badrinarayan Nandlal Rathi,
Age : major, Occ. Business,
R/o Mahesh Nagar, Aurangabad.
- 35 Sanjay Madanlal Sarada,
Age : major, Occ. Business,
R/o Dr. Kale Building,
Nutan Colony, Aurangabad.
- 36 Rameshwar Shivnath Rathi,
Age : major, Occ. Business,
R/o Rathi Sadan, N-4, CIDCO,
Near MSEB office, Aurangabad.
- 37 Omprakash Heda,
Age : major, Occ. Business,
R/o Sarth Electrical, Kalda Corner,
Aurangabad.
- 38 Adv. Subhash Ramnath Malani,
Age : major, Occ. Profession,
R/o Vikas Nagar, Osmanpura,
Aurangabad.
- 39 Laxminarayan Zumberlal Malpani (**Died**)

- 40 Deputy Charity Commissioner,
KPK, Aurangabad.
- 41 Laxmikant Suryakant Miniyaar,
Age 49 yrs., Occ. Service,
R/o Surana Nagar, Aurangabad.

... **Respondents.**

...

Mr. V.V. Bhavthankar, Advocate for the appellants
Mr. A.S. Bajaj, Advocate for the respondent Nos.2, 8, 9, 10, 14, 18 & 20
Mr. Y.G. Somani, Advocate for the respondent No.22
Mr. B.N. Patil, Advocate for the respondent No.24

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CORAM : SMT. VIBHA KANKANWADI, J.
DATE : 16th SEPTEMBER, 2019

JUDGMENT :

1 Present appeal has been filed by the original applicants challenging the dismissal of their application bearing M.A.R.J.I. No.434/2013 dated 17.06.2017, thereby rejecting their application for condonation of delay under Section 5 of the Indian Limitation Act.

2 The present appellants had preferred the said application being third party and contending that they are the beneficiaries of respondent No.1-

Trust for condoning the delay in filing appeal for challenging the order passed by Deputy Charity Commissioner, Aurangabad in Inquiry No.25/2013 dated 29.05.2013. The applicants had contended, that they are the interested persons and they had deposited amount of Rs.51,000/- by way of cheque, in respect of membership of the Trust. They are the members of community of 'Maheshwari' and had desire to serve the respondent No.1-public trust. They had approached respondent No.2, the Chairman for sanctioning their membership, however, he ignored. They went to office of Charity Commissioner to get details about the said Trust and got knowledge that a scheme has been sanctioned and previous deed of the Trust has been changed. Therefore, they obtained certified copies and made inquiry regarding the names of the members or persons related to the Trust. The applicants contended, that they wanted to challenge the said order passed by learned Deputy Charity Commissioner, however, there was delay, which according to them, was caused due to absence of knowledge of such proceedings and order passed. They also contended that if the delay is not condoned, then they would suffer.

3 The respondent Nos.3 to 6, 8, 10 to 15, 17 to 21, 23 to 39 filed common say at Exh.39 and strongly opposed the application. It was the preliminary objection that the applicants are not members of the Trust and

have no right to challenge the scheme framed and approved by Deputy Charity Commissioner in Inquiry No.25/2013. It was also contended that the applicants are not interested parties, nor beneficiaries of the Trust, in fact, they had no locus standi to challenge the impugned order under Section 72 of the Maharashtra Public Trust Act. They are only the members of community of 'Maheshwari', but there is no bona fide intention on their part to challenge the scheme. The change was necessitated for the smooth and proper working of the Trust and therefore, the general body of the Trust had passed the resolution to that effect. Necessary inquiry was made by the Deputy Charity Commissioner and thereby the scheme has been approved under Section 50-A of the Maharashtra Public Trust Act. The applicants never informed the respondents about depositing of the amount of Rs.51,000/- towards membership in the Trust account directly. When the amount was deposited and communicated on 30.06.2013, at that time, the scheme was already framed. Therefore, it cannot be stated, that the applicants are in any way members of the trust. The delay condonation application being not maintainable, it was prayed, that it should be dismissed. Respondent No.1, 9, 2 and 16 have filed their written say at Exh.57 and the respondent No.22 has also filed written say at Exh.65. They have also opposed the application and in addition it was stated, that the respondent No.1-Trust was formed long back in the year 1982 and therefore,

new scheme was required. On these grounds, they had prayed for rejection of the application.

4 After perusal of the contents of the application, written say and the evidence adduced by the parties, as well as then hearing both the learned counsel appearing for the appellant as well as respondents, the learned First Appellate Court held that the applicants are not members of Maheshwari community, but they are not beneficiaries of the Trust. Applicants cannot claim membership on the basis of subsequent deposit of the amounts and therefore, they had no locus standi to challenge the scheme as well as their application is not bona fide. The application for condonation of delay was then rejected. Hence, the present appeal.

5 Heard learned Advocate Mr. V.V. Bhavthankar for the appellants, learned Advocate Mr. A.S. Bajaj for respondent Nos.2, 8, 9, 10, 14, 18 and 20, learned Advocate Mr. Y.G. Somani for respondent No.22 and learned Advocate Mr. B.N. Patil for respondent No.24.

6 It has been submitted on behalf of the appellants that the delay was only of 45 days, which ought to have been condoned. Taking into consideration the fact, that the present appellants were not party before the learned Deputy Charity Commissioner and when they came to know about

the said decision, they had approached the District Court, liberal view ought to have been taken. Further, the learned Appellate Court failed to consider that the appellants had deposited the membership fees and therefore, they were the beneficiaries of the Trust, still without their knowledge the scheme came to be framed. Learned Appellate Court further failed in considering the merits of the case, when the application was only for condonation of delay.

7 Per contra, the learned Advocates appearing for the respondents supported the reasons given by the Appellate Court. When evidence was led before the Appellate Court, the fact had come on record that the deposit of the amount of membership was after the framing of the scheme, that too without giving any knowledge to the Trust and by depositing it directly in the account of the Trust in the bank. Such persons cannot be said to be the members of the Trust. The Appellate Court was justified in considering the merits of the case, also in a way, that if there would have been a locus standi for the appellants to challenge the scheme, then only there was reason to condone the delay, when they had no locus standi the Appellate Court was justified in dismissing the application. It was also demonstrated that the application filed by the appellants was not bona fide. They had every knowledge about the proceedings which were going on, yet, they had intentionally committed delay. They were in fact, interested in some other

projects, which have been sanctioned in favour of Trust and they want to somehow stall that project. Learned Advocate appearing for the respondents has filed affidavit in reply on behalf of the respondent No.1 and submitted on the basis of that affidavit, that the contents would show, how the application was filed with mala fide intention by suppressing true and correct facts.

8 At the outset, it can be said that though delay of 45 days is stated to have been caused, the learned Appellate Court was required to consider, as to whether it was required to be decided by the Appellate Court, that whether the applicants had given proper, sufficient and reasonable explanation for the said delay. The evidence has been led by the applicants and what has emerged from the evidence was, that all the four applicants were not the trustees of the respondent No.1-Trust. Though they contended, that they wanted to serve their community, yet, it was admitted further, that they had not preferred any application for membership in prescribed form as per the by-laws of the Trust. The said application for membership was also given after the scheme and order was passed by learned Deputy Charity Commissioner. It was demonstrated that the said amount towards membership was created to the Trust account and it appears that there was no intimation given regarding the same to the respondent No.1. The witness, who was examined on behalf of the applicants, had categorically stated that

after the new scheme was framed, he is not interested in the membership of the Trust. He has rather stated that after changing the constitution of the Trust, he would be interested for the membership of the Trust. Thus, what has been brought on record was, that the applicants had no intention to become member of the said Trust, when they had allegedly filed the application form. The learned Appellate Court was justified in considering the locus standi of the applicants in order to insure, whether their application for getting the delay condoned is bona fide or not. Unless a reasonable justifiable ground is shown, the delay could not have been condoned and the cross-examination of the witness, on behalf of the appellants, would give a clear picture. If they were interested in becoming member of the respondent No.1-Trust, then they would have intimated and adopted the proper procedure. If the application is not bona fide, then the appellants will not get any interest in getting the delay condoned.

9 No fault can be found with the order of the learned Appellate Court in rejecting the application for condonation of delay. There is no merit in the present appeal. It deserves to be dismissed. Accordingly, it is dismissed. No order as to costs.

(Smt. Vibha Kankanwadi, J.)