

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

WRIT PETITION NO.14255 OF 2018

MUKUND BALARAM PARDESHI DIED LRS BALARAJ AND OTHERS
VERSUS
SUNIL APPASAHEB PAWAR AND OTHERS

...
Advocate for the Petitioners : Shri Badakh Vishal S. and Shri S.S.Bora.

...

CORAM: RAVINDRA V. GHUGE, J.

DATE :- 24th April, 2019

Per Court:

1 The Petitioners, who are the original Plaintiffs in RCS No.207/2009, are aggrieved by the impugned order passed by the Appellate Court dated 02.07.2018 by which, Civil Miscellaneous Application No.174/2017 filed by the Defendants seeking condonation of delay in filing their appeal for challenging the judgment and decree of the Trial Court dated 09.03.2016, has been allowed, 461 days delay is condoned and costs of Rs.5000/- have been imposed.

2 The learned Advocate for the Petitioners has strenuously criticized the impugned order. My attention is drawn to the 15 grounds formulated in the memo of the petition. It is pointed out, on the basis of the record, that practically on the sixth date after appearance of the Defendants, the Trial Court has passed the "No W.S." order. Though the

advocate was engaged and the Defendants had appeared, the written statement was not filed. Thereafter, none of the Defendants participated in the suit and finally, by the judgment dated 09.03.2016, the suit was decreed.

3 It is contended by the Petitioners that the reason cited for seeking condonation of delay of 461 days is that the advocate appointed by the defendants has not intimated them as regards the date for filing the written statement and participation in the suit. In this backdrop, the learned Advocate for the Petitioners points out from the cross examination of one of the Defendants that his garage is situated at about 500 to 700 meters from the court. His advocate travels from the same road to reach the court. It is, therefore, submitted that a false plea has been put forth by the Defendants that their advocate did not inform them about the filing of the written statement and further participation in the suit.

4 I do find that the learned Advocate for the Petitioners is justified in contending that the reasons assigned by the Defendants for seeking condonation of delay, do not appear to be very sound. However, it cannot be ignored that as the Defendants have suffered an ex-parte judgment and decree involving an immovable agricultural land, the doors of the court would be closed upon them if the delay is not condoned. They would be precluded from challenging the said decree and would suffer an irreparable harm and serious prejudice keeping in view the law laid down

by the Honourable Supreme Court in the matters of ***Collector, Land Acquisition, Anantnag v/s Mst.Katiji, AIR 1987 SC 1353*** and ***Esha Bhattacharjee v/s Managing Committee of Raghunathpur Nafar Academy, (2013) 12 SCC 649***.

5 The learned Advocate for the Petitioners then points out that the Trial Court has drawn unsustainable conclusions by observing below paragraph 6 on the internal page 5 of the impugned order that "*It cannot be expected from a lay man working as mechanic at taluka place that he will diligently attend each and every date of the court proceeding and keep watch on the progress of the proceeding. Generally, people from village area after appointing advocate for representing them rely upon him that he will look after the matter and whenever necessary he will call them*". It is crystallized law that a litigant has to be diligent and the law will not assist a sleeping litigant. The Appellate Court, which has passed the impugned order, is expected to keep this aspect in mind while dealing with such cases.

6 Notwithstanding the above, as the Appellate Court has imposed costs of Rs.5000/- for condoning the delay of 461 days, which the Defendants have to deposit before the Appellate Court, I find that the Appellate Court has passed an equitable order, which cannot be branded as being perverse or erroneous or likely to cause gross injustice to the Petitioners.

7 In the light of the above, this Writ Petition, being devoid of merit, is, therefore, dismissed.

8 However, considering the request of the Petitioners that the appeal may be expedited since the suit is of the year 2009, I deem it appropriate to direct the Appellate Court to decide the appeal, registered after passing of the impugned order, as expeditiously as possible and in any case, on or before 29.02.2020. The Appellate Court shall issue appropriate directions to the Appellants to prepare the paper book expeditiously.

kps

(RAVINDRA V. GHUGE, J.)