

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

30 WRIT PETITION NO.4016 OF 2019

POPAT SANDHU AVHALE AND OTHERS
VERSUS
VILAS SAHEBARO SHINDE AND OTHERS

...
Advocate for Petitioners : Shri S.B.Solunke h/f.
Shri Prashant B. Jadhav

...
CORAM : P.R.BORA, J.
DATE: 8th April, 2019

PER COURT:-

1 Heard learned Counsel for the petitioners. The petitioners have preferred the present petition against the order passed below Exh.10 by District Judge-13, Aurangabad on 09.01.2018, in M.A.R.J.I. No.242 of 2015. The aforesaid application was filed by the respondents herein seeking condonation of delay, which has been caused in filing the appeal by them. The Trial Court by recording reasons condoned the delay subject to costs of Rs.5,000/-. The said order is challenged by filing the present petition.

2 Relying on the Judgment of the Hon'ble Apex Court in the case of *Oriental Aroma Chemical Industries Ltd., Vs. Gujarat Industrial Development Corporation and Ors.* [(2010) 5 SCC 459], the learned Counsel submitted that though there was absolutely no reason assigned in the application for condoning the delay, the First Appellate Court has wrongly exercised the discretion in favour of the respondents and has erroneously condoned the delay, which has caused serious prejudice to the petitioners.

3 On perusal of the impugned order, it does not appear to me that the First Appellate Court has not applied its mind. The law is settled that the discretion, if it is exercised judiciously while passing the order, such an order is not liable to be interfered with. The petitioners can agitate their matter on merit.

4 The facts involved in the Judgment relied upon by the learned Counsel for the petitioners are quite different from the facts involved in the present matter. In the circumstances, I see no merit in the petition so filed. Moreover, the order which has been passed in January 2018 is challenged by filing present petition in August 2018, but the matter was not circulated till date. In the meanwhile, the appeal has been proceeded further and it is at the stage of hearing as informed by the learned Counsel for the petitioners.

5 It appears to me that the best course for the petitioners is to defend the appeal on merits. Writ Petition being devoid of any substance deserves to be dismissed and is accordingly dismissed.

(P.R.BORA)
JUDGE

SPT