

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

**FIRST APPEAL NO. 3015 OF 2016
WITH
CIVIL APPLICATION NO. 13341 OF 2018**

**SHAIKH SALIM SHAIKH RAHEMUTULLAH MANSOOR
VERSUS
ANJUMAN TARAQQUI TALIM JAMNER AND OTHERS**

Advocate for Appellant : Ms. H.M. Manglani h/f. Mr. N. S. Jaju.
Advocate for Respondents : Mr. S.B. Yawalkar.

**WITH
FIRST APPEAL NO. 3016 OF 2016
WITH
CIVIL APPLICATION NO. 13340 OF 2018**

**MANSOOR AHMED KHURSHID AHMED ZUBERI
VS.
ANJUMAN TARAQQUI TALIM JAMNER AND OTHERS**

Advocate for Appellant : Mr. A.S. Bajaj.
Advocate for Respondents : Mr. S.B. Yawalkar.

**CORAM : MANGESH S. PATIL, J.
DATE : 13.12.2019**

PER COURT :

Heard both the sides.

2. These are the appeals separately filed by two trustees impugning the orders passed by the District Judge on the same day in their respective appeals / applications preferred by them under Section 72 of the Maharashtra Public Trust Act, 1950 (for short "Act of 1950") seeking to impugn the common order passed by the Assistant Charity Commissioner in a proceeding under Section 50-A of the Act of 1950 for confirming the scheme of a public charitable trust. Since there was delay of 133/134 days in filing the appeals, applications were filed for condonation of delay and by

the impugned separate orders passed on the same day, the applications were rejected. Hence these appeals.

3. The learned advocate for the appellants Mr. Bajaj and Ms. Manglani holding for Mr. Jaju, submit that the delay was marginal. The order passed by the Assistant Charity Commissioner in the proceeding for confirming scheme was sought to be challenged. The delay was properly explained. There was communication gap between the appellants and their respective advocates. Unnecessarily emphasis has been placed by the learned District Judge on the fact that in one of these matters there was one statement in as much as the applicant / appellant therein has stated that he was not even aware about the proceedings before the Assistant Charity Commissioner. A legitimate right of the appellants to contest the proceedings has been destroyed at the threshold by refusing to condone the delay. It is trite that the matters are better allowed to be decided on merits rather than default. Merely because there was some delay in preferring the appeal, the learned District Judge ought not to have taken hyper technical view. There were no mala fides and no ulterior motive. The delays should have been condoned for the reasons mentioned in the respective applications.

4. The learned advocate Mr. Bajaj, would further submit that an explanation has been given in the appeal memos as to how there was a communication gap and it was a matter of poor drafting as no party would ever state that he was not aware of pendency of his proceeding.

5. Learned advocate for the respondents Mr. Yawalkar, submits that the delays have not been properly explained. They had not come before the District Court with clean hands. There was no sufficient and reasonable cause disclosed and no fault can be found with the observations and conclusions by the learned District Judge and passing the impugned orders.

6. I have carefully gone through the papers. Obviously, the party who is

contesting the matter before the lower forum would never consciously plead ignorance. It could be hypothetically a situation where a party may not be aware about the decision having been rendered, but it would never state when it is contesting the matter, about ignorance of pendency of matter. Obviously, it was the state of fact. However, the question here is whether that alone could be a reason to brand the party of being grossly negligent or lacking bona fides and there being deliberate inaction. This is what precisely the learned District Judge has concluded. Only by referring to the above mentioned aspect about misstatement of fact that he apparently has jumped to the conclusion that it was sufficient to draw a conclusion that there was gross negligence, deliberate inaction and lack of bona fides.

7. In the other matter, the learned District Judge has observed that it was for the appellant to demonstrate that he was not duly served with the notice of the proceedings before the Assistant Charity Commissioner. Needless to state that no such negative evidence is expected. If at all the fact was disputed there should have been positive material before the District Judge to demonstrate that the appellant was duly served with the notice of the same proceeding again. The learned District Judge has drawn an inference about the appellant being negligent on the sole ground that in spite of claiming to be a secretary of the trust and managing the affairs by coming down to Jamner from Pune, he could not have been unaware about pendency of the matter. In my considered view such jumping conclusion by the learned District Judge is not sustainable on facts or in law. If at all the appellants being interested persons are intending to participate in the same proceedings, the District Court should not have deprived them at the threshold while impugning the order passed by the Assistant Charity Commissioner, in the proceedings under Section 72 of the Maharashtra Public Trust Act.

8. Needless to state that in view of the decision in the case of *Collector, Land Acquisition, Anantnag Vs. Mst. Katiji and Others*, AIR 1987 SC 1353,

and several other catena of judgments, the primary considerations while deciding the applications for condonation of delays is, as to whether the appellant was to gain anything by causing delay, whether there was some ulterior motive or some mala fides. In my view, there is nothing on the record to demonstrate that the appellants herein were to gain anything by not preferring appeals in time and there was no material before the District Judge to come to such conclusion.

9. Taking into account the over all conspectus of the matter, the observations and the conclusions drawn by the District Judge in refusing to condone the delays are not sustainable and liable to be quashed. Applications are allowed. The impugned orders passed by the District Judge are quashed and set aside. The delays are condoned. Needless to state that the learned District Judge now will have to register the appeals and decide those in accordance with law.

10. The learned District Judge shall now decide the appeals as expeditiously as possible. The parties shall co-operate the learned District Judge in disposing of the First Appeals. The parties to appear before the District Court on 15.01.2020.

11. There are applications by some of the respondents seeking direction for holding elections. Obviously, no directions can be issued in these appeals. Those applications are disposed of granting liberty to the applicants therein to approach the office of the Charity Commissioner or the District Judge.

(MANGESH S. PATIL, J.)