

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

**932 CIVIL REVISION APPLICATION NO.196 OF 2016
WITH
CIVIL REVISION APPLICATION NO.218 OF 2017**

**VASANTLAL KANAKMAL GANDHI AND ANOTHER
VERSUS
THE GENERAL MANAGER, BANK OF MAHARASHTRA, HEAD OFFICE
AT SHIVAJINAGAR, PUNE AND ANOTHER**

...
Advocate for Applicants : Shri L.B. Palod
Advocate for Respondent No.2 : Shri Sharad V. Natu
Respondent No.1 served.

...
**CORAM : P.R.BORA, J.
DATE: 28th June, 2019**

PER COURT:-

1. Since in both these Civil Revision Applications parties are similar, I have heard arguments in both these applications simultaneously and I deem it appropriate to decide these matters by common reasoning.

2. The revision applicants have challenged the orders passed in both these matters by the First Appellate Court whereby the said Court has condoned the delay in filing the appeals; in one matter of 2505 days and in another matter of 489 days. It is seriously contended by Shri L.B.Palod, learned Counsel that there were serious lapses procedural as well as legal which could not have been overlooked and ignored by the First Appellate Court while deciding the Civil Miscellaneous Applications before it. The learned Counsel submitted that huge delay has been condoned on the only ground that public money is involved. The learned Counsel submitted that the public bodies and the private persons

both are on the same footings and same principles are to be applied while considering the merit of matters. The learned Counsel submitted that though it was brought to the notice of the learned First Appellate Court that no correct facts are stated by the respondent Bank before it, the said Court has allowed both these applications, which has resulted in miscarriage of justice. The learned Counsel, in the circumstances, has prayed for setting aside the orders impugned in these matters. The learned Counsel tendered across the bar bunch of Judgments in support of his arguments which were also submitted before the First Appellate Court also.

3. Shri S.V.Natu, learned Counsel appearing for respondent No.2 supported the impugned orders.

4. Though, learned Counsel Shri Palod has very strenuously argued that the procedural legal aspects also must have been dealt with by the First Appellate Court very seriously and when there was no sufficient cause made out by the respondent Bank to substantiate or to justify the huge delay which has occurred on its part in filing the Appeals, the First Appellate Court must not have condoned the delay and he has also cited certain Judgments in support of his said contention, after having considered the entire material on record and on perusal of the impugned orders, it does not appear to me that any patent error has been committed by the First Appellate Court in passing the impugned orders. It is true that delay caused in one matter is of quite long period, however, the First Appellate Court has accepted the reasons as are assigned by the respondent Bank and has taken a possible view. In such matters, it does not appear to me that when a possible view is taken by the Court

below and when there is no arbitrary exercise of powers vested in it by the said Court, this Court in the writ jurisdiction shall cause interference in the discretionary orders so passed.

5. Secondly, it has to be stated that though all technical legal aspects are argued by the learned Counsel for the petitioners, no such case is made out that there was any malafide intention of the respondent Bank in approaching the First Appellate Court belatedly. The Honourable Apex Court has consistently held that if the delay is without any malafides and unintentional, the party concerned must be given an opportunity to put-forth its case on merits. In the instant matter, as I noted herein above, neither any case is made out by the petitioners nor any such case is revealed from the material which is placed on record in the present petitions leading to an inference that the respondent Bank deliberately and with malafide intention approached the First Appellate Court belatedly. In the circumstances, I see no reason for causing any interference in the impugned orders. Both the Civil Revision Applications, therefore, stand dismissed.

(P.R.BORA)
JUDGE

SPT