

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.5950 OF 2019

YADAV RAGHUNATH LANDE AND OTHERS
VERSUS
ASHOK NARAYAN KOTE AND OTHERS

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Advocate for Petitioners : Shri Bedre V.S.

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CORAM : RAVINDRA V. GHUGE, J.

Dated: August 28, 2019

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PER COURT :-

1. The petitioners / defendants are aggrieved by the order dated 28.9.2018, passed by the trial Court, by which, CNA No.12 of 2014 is allowed. Costs of Rs.2,000/- are imposed on the plaintiffs and the delay of 2 years and 6 months caused in filing the application for seeking restoration of RCS No.163 of 2005, has been condoned.

2. I have considered the strenuous submissions of the learned Advocates for the petitioners and have gone through the 16 grounds formulated in the memo of the petition.

3. Issue is as regards condonation of delay of 2 years and 6 months. The application seeking restoration of RCS No.163 of

2005 is still pending.

4. The suit was dismissed in default on 11.10.2011. It was originally filed on 8.1.2001 and registered as 13 of 2001. The applicants have stated in their application that they were not aware that the suit was transferred to another Court and was dismissed in default on 11.10.2011. They led evidence before the Court. The petitioners claimed that they were residing outside the village in between 2011 and 2013 at Wakadi. However, it is admitted that the plaintiff was running a flour mill and also had a Bank account. As such, a false reason has been put forth by the applicant and the impugned order deserves to be quashed and set aside.

5. The Apex Court in the case of Collector, Land Acquisition Anantnag and another Vs. Mst. Katiji and others [(1987) 2 SCC 107], has observed while dealing with the application for condonation of delay, as under :-

" 1. Ordinarily a litigant does not stand to benefit by lodging an appeal late.

2. Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of

justice being defeated. As against this when delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties.

3. *"Every day's delay must be explained" does not mean that a pedantic approach should be made. Why not every hour's delay, every second's delay? The doctrine must be applied in a rational common sense pragmatic manner.*

4. *When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay.*

5. *There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala fides. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk.*

6. *It must be grasped that judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so."*

6. It cannot be ignored that if the delay is not condoned, the plaintiff would be rendered remediless. So also, the delay does not appear to be deliberate or inordinate. The plaintiff does not gain

any advantage by letting his suit be dismissed in default and then prolong the litigation. The dismissal of the suit is likely to cause an irreparable harm to the plaintiff. The trial Court has imposed costs of Rs.2000/- while condoning the delay. I do not find that the impugned order could, therefore, be termed as being perverse or erroneous.

7. This petition, being devoid of merits is, therefore, dismissed.

(RAVINDRA V. GHUGE, J.)

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akl/d