

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.1229 OF 2019

Prakash Baburao Jadhav and Anr. ...Petitioners
vs.
Vasant Deoram Gavali ...Respondent

Mr. G.R. Agrawal, for the Petitioner
Mr. Milind Sathaye, for the Respondent

CORAM : M. S. SONAK, J.

DATE : APRIL 03, 2019

JUDGMENT

. Heard Mr. Agrawal, learned counsel for the Petitioners and Mr. Sathaye, learned counsel for the Respondent.

2. The challenge in this Petition is to the order dated 23rd November, 2018 by which the learned Appeal Judge has refused to condone the delay and take on record the cross objection.

3. From the perusal of the impugned order, it seems that though the delay appears to be substantial, there is sufficient cause shown for the same. The cause shown is that the Appeal was initially instituted in this Court and after it remained pending in this Court for several years on account of amendment to the provision relating to pecuniary jurisdiction, the Appeal was transferred to the District Court at Niphad. The explanation is that

the Petitioners were under *bonafide* impression that cross objections have already been filed in the matter. It is pleaded that there was communication gap between the Petitioners and their advocate. Since, this is a case of filing of the cross objections, the explanation can be accepted and the delay condoned.

4. Mr. Sathaye, however, points out that the Petitioners have been negligent in the matter. He points out that there was no reason not to file cross objections in this Court or at least soon after matter the was transferred to the District Court. He points out that it is only when the matter came up for final hearing, the application for condonation of delay along with leave to file cross objections came to be filed.

5. In the matter of this nature, some lapse on the part of the Petitioners cannot be ruled out. However, sufficient cause has been shown and it cannot be said that the cause has been shown smacks of *malafide*. Further this is not a case that the Petitioners have said to be delayed the proceeding before the Appeal Court. Therefore, the prejudice to the Respondent can be compensated by imposition of costs.

6. The impugned order is accordingly set aside.

7. The delay in filing the cross objections is condoned.

8. Cross objections are directed to be taken on record and considered by the Appeal Court on their own merits and in accordance with law. This relief is subject to the Petitioners' paying to the Respondent costs of Rs. 25,000/- within a period of four weeks from today.

9. Such costs may either be directly paid to the Respondent or deposit before the Appeal Court at Niphad. If the costs are deposited, the Respondent shall have liberty to withdraw the same unconditionally. If no costs are paid/deposited then this Petition shall be deemed to have been dismissed with cost of Rs. 25,000/-.

10. All concerned to act on the basis of authenticated copy of this order.

(M. S. SONAK, J.)