

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.11722 OF 2017

Gulabsingh Kisan Patil

.. Petitioner.

Vs.

ICLES's Motilal Zunzunwala College
of Arts, Science & Commerce & Ors.

.. Respondents.

Mr.Mihir Desai, Senior Advocate with Mr.Chetan Mali for the Petitioner.

Mr.Shaikh Nashir Masih and V.K. Jagwani for the Respondent Nos.1 and 2.

Ms.M.S.Bane AGP for the Respondent No.4.

CORAM : A.K. MENON, J.

DATED : 29TH JANUARY, 2019

P.C. :

1. By this petition, the petitioner challenges the order dated 23rd February, 2017 passed in Miscellaneous Application No.5 of 2016 by the Presiding Officer, Mumbai University and College Tribunal.

2. The application made by the petitioner sought condonation of delay of 135 days in filing the appeal. The impugned order dismissed the application of the petitioner. The case of the petitioner while seeking condonation of delay was that the petitioner was removed from service on 12th February, 2016. The order of removal was communicated to the petitioner on 16th February, 2016. Upon receipt of the order the petitioner is stated to have approached an Advocate who advised him to file an appeal but

told him that the an appeal should be filed within 90 days instead of within 30 days.

3. In the meanwhile, the petitioner was required to attend to his native place since his brother in law was unwell from 16th February, 2016 to April 2016. The petitioner returned only in third week of May 2016 and therefore appeal could not be filed in time. The petitioner claims to have approached his Advocate on his return but the Advocate had not prepared the appeal and therefore, the petitioner took back the papers and approached another Advocate resulting in delay of 135 days in filing the appeal. It is thereafter that the petitioner filed an application for condonation of delay.

4. There is no explanation in the application nor is it the case of the petitioner that he was prevented from contacting his Advocate in the interregnum. Even assuming that there period for filing an appeal was 90 days within this period of 90 days he did not contact his Advocate. The impugned order has considered all the contentions of the petitioner and the reasons are set out in paragraph 14. The order sets out the specific case of the petitioner. Firstly, that upon receipt of the order, he reportedly received incorrect advice as to the period of limitation for filing an appeal. Secondly, the illness of brother in law of the petitioner, who is said to have expired in May 2016 and thirdly, the petitioner's claim to have taken back papers from the earlier Advocate and having thereafter filed the application for condonation of delay.

5. The impugned order has considered these aspects in great detail and has rightly observed that in the affidavit in support which is dated 10th May, 2016 contradicts the petitioner's case that he returned to city in the third week of May 2016, because the third week started on 16th May, 2016. The name of the Advocate who has apparently advised him to file an appeal within 90 days is also not disclosed.

6. Furthermore, the tribunal has found that the delay in filing the appeal computed was not 135 days but was about 158 days. In addition to above, the petitioner failed to give any particulars of when he left Mumbai to attend at his native place, where his native place is situated and when his brother in law had expired. No details of the so called illness given. The petitioner has not produced medical certificate or death certificate of his brother in law and not even specified these particulars in the application. Thus for all these reasons, the application came to be rejected. The Tribunal has considered all aspects, hence I find no reason to interfere with the impugned order in the writ jurisdiction of this Court. I pass the following order :

(i) Writ Petition is dismissed.

(ii) No order as to costs.

(A.K. MENON.J.)