

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 8489 OF 2017**

Vaishali S. Jondhale ...Petitioner

Versus

Shivajirao Jondhale ...Respondent

Mr. Ganesh Bhujbal, i/b Mr. Pawan Mali, for the Petitioner.

CORAM: N. J. JAMADAR, J.

DATED : 27th SEPTEMBER, 2019

Oral Order :-

1. Heard Mr. Bhujbal, the learned Counsel for the petitioner.
2. The challenge in this petition is to a common order dated 27th March, 2017, passed by the learned Joint Charity Commissioner-I, Mumbai, in Miscellaneous Application Nos.499/2016, 500/2016, 501/2016 and 502/2016, whereby the learned Joint Charity Commissioner was persuaded to allow the application under Section 5 of the Limitation Act, 1963, for condonation of delay of 1,182 days in preferring appeal against the order dated 5th January, 2013, passed by the Assistant Charity Commissioner-II, Greater Mumbai, in Change Report Nos.ACC-II/2574 to 2577 of 2011, by which order the petitioner herein was directed to be joined as party to the proceeding in the capacity of an objector.

3. Mr. Bhujbal submitted that the learned Joint Charity Commissioner committed a manifest error in exercising the discretion to condone the inordinate and unexplained delay in preferring appeal against the order passed by the learned Assistant Charity Commissioner, without adverting to the question of there being any sufficient cause for the respondent – applicant for not preferring the appeals within the stipulated period. It was further submitted that the learned Joint Charity Commissioner misdirected himself in dealing with the merits of the matter instead examining the question as to whether the respondent – applicant was prevented by a sufficient cause from preferring the appeals, within the stipulated period of limitation.

4. From the perusal of the impugned order, it becomes evident that the learned Joint Charity Commissioner was of the view that having regard to the nature of the dispute, it was necessary to adopt a liberal approach while construing the application for condonation of delay. Undoubtedly, the learned Joint Charity Commissioner did not attach much weight to the sufficiency of the cause shown by the applicant – respondent herein.

5. It is trite that the Courts/Tribunals are expected to lean in favour of the condonation of delay so as to advance the cause of

substantial justice and determine the *lis* on merits. The submission of the learned Counsel for the petitioner that the learned Joint Charity Commissioner had not adverted to the relevant question, may have some substance. However, it can not be said that the applicant has not ascribed any justifiable reason.

6. From the perusal of the application, it becomes abundantly clear that the applicant – respondent was under the impression that the order of the Assistant Charity Commissioner, dated 5th January, 2013, was restricted to the change reports bearing No.ACC-II/2574 to 2577 of 2011, in which the petitioner herein was directed to be joined as an objector. In the said proceeding, the learned Assistant Charity Commissioner also recorded a finding under Section 73A of the Maharashtra Public Trust Act, 1950, that the petitioner herein was also a person having interest, albeit qua the said proceedings. Having regard to the dispute between the parties, it was realised by the applicant that the said status may be pressed into service by the petitioner in other proceedings as well. Thus, the said order was sought to be challenged in appeal along with an application for condonation of delay.

7. In the aforesaid view of the matter, the learned Joint Charity Commissioner was persuaded to allow the application. As the learned Joint Charity Commissioner has exercised the discretion which advances the cause of justice, interference with the exercise of the said discretion, in the writ jurisdiction of this Court, may not be appropriate.

8. Hence, I am not inclined to entertain the petition. The petition stands dismissed.

[N. J. JAMADAR, J.]