

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

CIVIL APPLICATION (CAO) NO. 396 OF 2019
IN
CROSS-OBJECTION STAMP NO. 226/2019
IN
FIRST APPEAL NO. 1172/2013 (D)

Krishnarao s/o Shivramji Shirpurkar V/s V.I.D.C. and others.

*Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's Orders.*

Court's or Judge's orders.

Shri P.R.Masurkar, counsel for the Appellant /Cross-objector.
Ms Sanskruti Khule, counsel h/f Shri N.M. Gaidhane, counsel for the
respondent No.1/V.I.D.C..
Shri I.J.Damle, AGP for the respondent Nos. 2 and 3.

CORAM: ARUN D. UPADHYE, J.
DATE: 12-03-2019.

Heard Shri P.R. Masurkar, learned counsel for the
appellant/cross-objector.

Learned counsel has submitted that there is delay of
1820 days in filing cross-objection i.e. Cross-Objection Stamp
No.226/2019. He further submitted that First Appeal
No. 1172/2013 is already dismissed in default. However, the
respondent can file the cross-objection, and therefore delay could
be condoned and cross-objection be registered.

Learned counsel for the respondent No.1/VIDC has
submitted that though the First Appeal No.1172/2013 is
dismissed in default and not restored, learned counsel for the
respondent No.1/VIDC has orally suggested that First Appeal
may be restored and delay for filing the cross-objection can be
condoned.

Shri I.J. Damle, learned AGP for the respondent
Nos. 2 and 3 has strongly objected for condonation of delay as

well as registration of Cross-objection.

After considering the submissions of both the sides, I am of the considered view that when appeal is not pending and already dismissed for want of prosecution, question of condonation of delay and permitting the appellant/cross-objector to file cross-objection does not arise.

Submissions put-forth on behalf of the respondent No.1/VIDC that the First Appeal may be restored and delay may be condoned also cannot be accepted. It appears that respondent No.1/VIDC and appellant/cross-objector has made such submission which is not tenable at all.

Learned counsel for the appellant has relied upon authority reported in **2005 AIR SCW 1712 Hari Shankar Rastogi V. Sham Manohar and others**. The facts and circumstances of the case involved in the said authority are not applicable here. In the above ruling, the question whether the cross-objections are maintainable even when the Appeal has been withdrawn was considered. Here in the case at hand, the appeal is already dismissed in default and question of filing cross-objection in the said appeal does not arise.

Civil application for condonation of delay as well as cross-objection stamp No. 226/2019 cannot be permitted to be filed and are dismissed accordingly. No order as to costs.

JUDGE