

FARAD CONTINUATION SHEET No.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO. 5602/2018

(SHANTILAL LADURAM INDURIA THR. POA MURLIDHAR LADURAM INDORIA **VERSUS**
 RAMPRASAD KUSHALRAO TARE & OTHERS)

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

Court's or Judge's orders

 Shri A.G. Agrawal, counsel for petitioner.
 Shri K.V. Deshmukh, counsel for R-1 to 4.

CORAM : A.S. CHANDURKAR, J.

DATE : JUNE 26, 2019.

The petitioner who is the original plaintiff is aggrieved by the order passed by the Appellate Court condoning delay in filing the appeal challenging the decree as passed by the trial Court.

The petitioner has filed the suit for specific performance which came to be decreed on 23.04.2015. The respondents-defendants filed an appeal on 19.12.2015 alongwith an application for condonation of delay. According to the respondents, the suit was initially filed in the Court at Mehkar and it was subsequently transferred to the Court at Lonar. Some of the defendants could not appear after the transfer of the proceedings and hence they were not aware about the decree being passed. Before the Appellate Court, affidavit of one of the defendants dated 22.08.2016 came to be filed. The Appellate Court by the impugned order has condoned the delay subject to costs of Rupees three thousand being paid to the original plaintiff.

Shri A.G. Agrawal, learned counsel for the petitioner submitted that in the application for condonation of delay, no proper explanation was given by the defendant. By filing an

affidavit subsequently, the defendants sought to blame their counsel which was not justified. Moreover, the trial Court had granted sufficient time to the defendants despite that they remained absent. In absence of sufficient cause being shown, the Appellate Court was not justified in condoning the delay.

Shri K.V. Deshmukh, learned counsel for the respondent nos.1 to 4 submitted that the Appellate Court having accepted the reasons assigned and having imposed costs, there is no reason to interfere with the impugned order. Moreover as the proceedings were transferred from the Court at Mehkar to the Court at Lonar, the defendants could not lead their evidence. The impugned order therefore does not call for any interference.

On hearing the learned counsel for the parties, it is seen that the Appellate Court after referring to the *Roznama* of the proceedings before the trial Court has accepted the cause shown for the delay in filing the appeal. It has noticed the transfer of the suit from Mehkar to Lonar and thereafter by imposing costs on the defendants has been pleased to condone the delay. It is found that the impugned order enables an adjudication of the proceedings on merits and therefore I do not find any reason to interfere in writ jurisdiction. The interest of the petitioner can be taken care of by expediting the proceedings in the appeal. Accordingly, the order passed by the Appellate Court condoning the delay stands confirmed. On the costs being paid and the appeal being registered, it be heard expeditiously on its own merits.

The Writ Petition is dismissed. No costs.

JUDGE