

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

CIVIL APPLICATION (CAF) NO. 2078 OF 2018
IN
FIRST APPEAL ST. NO. 8430 OF 2018

Pradip Subhash Raut

..vs..

Assistant Charity Commissioner, Washim and ord.

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

Court's or Judge's orders

Ms. Deepali Sapkal, Adv. for appellant.
Ms. T. Udeshi, A.G.P. for respondent no.1.
Shri A.J. Gilda, Adv. for respondent no. 7.

CORAM : VINAY JOSHI, J.
DATED : 29th NOVEMBER, 2019

Heard.

This is an application of condonation of delay of 160 days caused in filing the first appeal challenging the decision of Assistant Charity Commissioner dated 31.07.2017, in terms of Section 47(5) of the Bombay Public Trusts Act 1950. The delay is sought to be condoned by stating the reasons that, the applicant was litigating in wrong forum which has consumed the time. It is pleaded that, the applicant initially challenged the impugned order by way of Writ Petition bearing No. 7336 of 2017 filed on 31.10.2017. When the Writ Petition was listed on 05.03.2018 on realizing existence of provision of appeal, the writ petition is withdrawn on the very date and this appeal is preferred on 09.04.2018

For the aforesaid reasons, applicant seeks

condonation of delay. It is also submitted that, the applicant has initially adopted the recourse of challenging the impugned order within 60 days i.e. the period provided for filing of appeal.

Considering the nature of litigation and rights involved of the parties, the applicant prayed for condonation.

The other side resisted this application by contending that, the applicant/appellant has made totally incorrect statement in paragraph no. 2 of the application which itself is sufficient to reject the application *in limine*. To be specific the respondent would submit that, the applicant has pleaded that the impugned order was passed on 31.07.2017 and then within 60 days i.e. on 31.10.2017 Writ Petition is filed, which is incorrect. It is submitted that, there was a gap of more than 60 days in between date of impugned order i.e 31.07.2017 and date of filing of writ petition i.e. 31.10.2017. In support of said contentions, respondent placed strong reliance on the Apex Court judgment in the case of **Pundlik Jalam Patil (deceased by Lrs.) v. Exe. Eng. Jalgaon Medium Project and Anr. Reported in AIR 2008 SC (Supp) 1025.**

He took me through part of paragraph no. 11 of the judgment, wherein Hon'ble Supreme Court expressed that, "In our considered opinion incorrect statement made in the application seeking condonation of delay itself is sufficient to reject the application without any further inquiry." After going through the entire judgment it reveals that the Hon'ble Supreme Court on

evaluation of facts noted that the acquiring body was well aware about the earlier decision, still they made a statement that, they were unaware about the stand taken by the Special Land Acquisition Officer as well as the impugned judgment. After scanning the factual material, several instances are noted that Land and Judiciary Department within 15 days from the date of award, communicated the decision to acquiesce the decision and then there was further correspondence. In this context, Hon'ble Supreme Court expressed that if, such incorrect statement is made then the Court shall not condoned the delay. The facts and circumstances of the case in law are not as such, so as to demonstrate that either the applicant made any misleading statement or suppressed facts which otherwise revealed. The applicant has fairly given two dates and made a statement that within 60 days writ petition is filed. This is nothing but mathematical error of calculation.

Considering the peculiar facts, it is not a case where one can say that intentional incorrect statement is made to mislead the Court or otherwise. Coming to the facts, Section 14 of the Limitation Act, provides exclusion of time if a party is *bona fide* litigating before another forum, having no jurisdiction. The period of delay on excluding the time consumed in writ petition is barely of one or two months. Time and again, the Hon'ble Supreme Court reminded to take liberal justice oriented approach while dealing with the delay condonation application.

In such circumstances, I hold that, the applicant has made out sufficient cause to condone the delay,

however, on condonation of delay naturally other side is require to face another round of litigation. In view of that, delay stands condoned subject to costs of Rs.5,000/- (Rupees Five Thousand Only) to be paid to the respondent nos. 2 to 7 within two weeks from the date of this order, failure to comply the condition, has effect of rejection of this application.

Learned Counsel for the applicants requested to reduce the costs amount. I do not see any justification to reduce the costs amount. By use of discretion, liberty is granted to fight cause on merit, hence request is rejected.

JUDGE

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