

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.3792 OF 2020

KAMLAKAR SHRIPATI SARADE THORUGH LRS RANJANA KAMLAKAR
SARADE AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA THROUGH COLLECTOR OSMANABAD

...
Advocate for the Petitioners : Shri Jadhav Narsing B.
AGP for the Respondent : Shri S.W.Munde
...

CORAM: RAVINDRA V. GHUGE, J.
DATE :- 07th March, 2020

Per Court:

1 The petitioners are aggrieved by the order dated 24.09.2010 passed by the learned Civil Judge, Senior Division, Osmanabad in Miscellaneous Application No.31/2008 by which, the said proceedings, seeking condonation of delay in filing a restoration application, have been dismissed on account of the failure on the part of the petitioners in leading evidence.

2 I have considered the submissions of the learned advocate for the petitioners and the learned AGP on behalf of the respondent.

3 The LAR Proceeding No.719/1997 has been dismissed by the LAR Court on 12.01.2000 under Order VII Rule 11(c) of the Code of Civil Procedure due to deficit court fees. The petitioners then preferred the said Miscellaneous Application on 12.02.2008 praying to condone the delay of

8 years caused in filing the restoration application.

4 The learned advocate for the petitioners submits that the original claimant has already passed away. The legal heirs have come on record and as they were not aware of the pending litigation, they were unable to pursue the said litigation. After realizing that the LAR proceedings were dismissed on 12.01.2000 on account of deficit court fees, they moved the Miscellaneous Application on 12.02.2008 for restoration and condonation of delay in filing the restoration application, immediately after gathering the information. He further submits that in several such cases, this Court has directed the claimant to file an affidavit that he would not claim interest on the enhanced amount for the entire period due to which the proceedings were dismissed and the delay had occurred.

5 The learned AGP has strongly opposed this petition contending that the dates and sequence of evidents would indicate a gross conduct on the part of the petitioners.

6 I quite see that there is substantial delay in view of the sequence of events recorded above. However, the petitioner (Amol Kamlakar Sarade), who is in service in the Border Security Force, has filed an affidavit dated 07.03.2020 indicating that if the LAR No.719/1997, dismissed in default on 12.01.2000, is restored in future pursuant to the decision of the Trial Court, the claimants would not pray for interest on

the enhanced amount, if the LAR proceedings are allowed, for the period from 12.01.2000 till the date of restoration of the LAR No.719/1997.

7 The affidavit dated 07.03.2020 filed by the petitioner (Amol Kamalakar Sarade) is taken on record and marked as "X" for identification. This affidavit "X" shall be a part of this order and the writ to be served upon the learned Court in M.A. No.31/2008, would also carry the copy of affidavit "X".

8 In view of the above, this Writ Petition is partly allowed. The impugned order dated 24.09.2010 is set aside and M.A. No.31/2008 for seeking condonation of delay, is restored in the light of the affidavit "X". The petitioners shall appear before the said Court on 01.04.2020 and shall lead evidence without seeking adjournment from 01.04.2020 onwards. The learned Court would issue notice to the respondents in the said condonation of delay application. Needless to state, the learned Court would decide the said application on its own merits and preferably on or before 31.10.2020.