

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

WRIT PETITION NO. 1044 OF 2020

MURLIDHAR SUBHAN SUTAR
VERSUS
SHRI NAGNATH SANSTHAN AUNDHA AND OTHERS

...
Advocate for the Petitioner : Shri H. I. Pathan
AGP for Respondent Nos. 1 to 3 : Shri A. S. Shinde
...

CORAM : RAVINDRA V. GHUGE, J.

DATED : 11th MARCH, 2020

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PER COURT :

1. The Petitioner, original plaintiff in Regular Civil Suit No.151/2014, is aggrieved by the order dated 21/02/2019 passed by the Appellate Court, by which, the delay of 13 months has been condoned and the application seeking condonation of delay in filing a Regular Civil Appeal, has been allowed, by imposing costs of Rs. 7,940/-.

2. The learned Advocate for the plaintiff has strenuously criticized the impugned order. He relies upon the six grounds formulated in the memo of the petition and submits that though the delay of 13

months appears to be small, sufficient reasons have not been assigned for seeking condonation. The office of the Tahsildar and the Deputy Collector have assigned the reasons of Administrative / Procedural delays, which cannot be believed. Good reasons are not assigned for seeking condonation of delay. Even earlier, a 'No W.S.' order was passed on 06/12/2014. Application Exhibit 53 praying for leave to file the written statement was rejected on 08/12/2015.

3. The Petitioner places reliance upon the following three judgments :-

(1) Balwant Singh Vs. Jagdish Singh & Ors, Civil Appeal No. 1166/2016 (SC), decided on 08/07/2010

(2) Sanjay Singh and anr. Vs. Central Himalayan Land Development Co.Ltd., Civil Appeal No. 1928/2019 (SC), decided on 21/02/2020

(3) Shri Nandkishor Kanhyalal Agrawal Vs. Dhule Municipal Corporation and others, Civil Revision Application No. 97/2005, decided on 09/09/2011.

4. I find from the record that the suit has been preferred for declaration of ownership and perpetual injunction. An agricultural land is at issue. If the delay is not condoned, the original defendant No. 3, a trust who has preferred the appeal, would be rendered remediless as the litigation would conclude at the very first level before the Trial Court.

5. I do not find that the delay of 13 months could be said to be inordinate or deliberate. The appellant trust has offered reasons for the delay. The President of the trust is the Tahsildar and being a Revenue Officer, there was a procedural delay. The Tahsildar was transferred. An acting Tahsildar took charge from 08/12/2016 to 31/05/2017. After the regular Tahsildar took charge, the papers were processed and the appeal was filed.

6. I also find that the Court has imposed costs of Rs. 7,940/- for a delay of 13 months. The law laid down by the Honourable Apex Court in the matters of ***Collector, Land Acquisition, Anantnag v/s. Katiji,***

AIR 1987 SC 1353 and Esha Bhattacharjee v/s. Managing Committee of Raghunathpur Nafar Academy, (2013) 12 SCC 649), would indicate that condonation of delay has to be liberally considered unless the delay is caused for ulterior or oblique motives.

7. In view of the above and since the delay is not inordinate, I do not find that the impugned order would be termed as being perverse and erroneous. This petition, being devoid of merit is, therefore, dismissed.

(RAVINDRA V. GHUGE, J.)

shp/-