

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

WRIT PETITION NO. : 10146 OF 2018

Shri Mahadev Devsthan Lingdara
Sanstha, Hadasni, Tal. Hadgaon,
Dist. Nanded, Through its Chairman,
Shri Vitthal Ganpatrao Suryavanshi
Age : 71 years, Occ. Agri., R/o Hadasni,
Tal. Hadgaon, Dist. Nanded.

.. **PETITIONER**

VERSUS

Shivshankar Onkargiri Gosawi,
Age : 54 Years, Occ ; Agri.,
R/o Hadasni, Tal. Hadgaon,
Dist. Nanded.

.. **RESPONDENT**

...
Advocate for the Petitioner :- Shri J. J. Patil
AGP for the Respondent : Shri S. V. Natu
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CORAM : RAVINDRA V. GHUGE, J.

DATED : 18th FEBRUARY, 2020.

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ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith and heard finally by the consent of the parties.

2. The Petitioner is aggrieved by the order dated 20/06/2018 passed by the Appellate Court, by which, MARJE No. 115/2016 filed by the Respondent seeking

condonation of 524 days delay caused in filing the Regular Civil Appeal, has been allowed.

3. Grievance is that the reasons cited for seeking condonation of delay are baseless and not convincing. Though seven grounds have been raised for seeking condonation of delay, not a single ground would justify the delay caused. It is further contended that the appellant claimed to have been given an incorrect picture about the judgment dated 02/02/2015 delivered in Regular Civil Suit No. 36/2007, by his Advocate. This cannot be a ground for condonation of delay.

4. Having considered the submissions of the learned Advocates for the respective sides, I have perused the petition paper book with their assistance, have gone through the application seeking condonation of delay and the impugned order.

5. The record reveals that the Petitioner is a priest, who does the work of conducting 'Puja' in a temple.

After his suit was decreed partly, he was informed by his Advocate that he has succeeded in the matter. Only after the defendant filed Regular Civil Suit No. 281/2015 seeking recovery of possession from the Respondent, that he realized that his suit was not fully decreed. After taking legal advise, he has moved the application for condonation of delay. The suit property is the only immovable property owned by the Respondent.

6. The Honourable Apex Court has settled the law on condonation of delay in the matters of ***Collector, Land Acquisition, Anantnag and another v/s. Mst.Katiji and others, AIR 1987 SC 1353 and Esha Bhattacharjee v/s Managing Committee of Raghunathpur Nafar Academy, (2013) 12 SCC 649***).

7. I do not find that the delay can be said to be inordinate or deliberate. The Respondent would not get any advantage by delaying his own appeal. He had partly succeeded before the Trial Court and has

taken a stand that his Advocate informed him that his suit was decreed. With these circumstances, it cannot be said that the Appellate Court has exercised its jurisdiction, which is likely to cause grave injustice to the Petitioner.

8. Since I expressed a view that the costs of Rs. 3,000/- imposed by the Appellate Court would be enhanced to Rs. 5,000/-, the learned Advocate for the Petitioner submitted that the amount may be donated for the treatment of poor patients and the appeal may be expedited.

9. In view of the above, this petition is disposed off with the following directions :-

(a) The Respondent shall deposit an amount of Rs. 2,000/- with the Government Medical College and Hospital, Aurangabad, **through Medical Officer, High Court Dispensary, Aurangabad**, either in cash or by Demand Draft (Demand Draft be drawn in the name of “**Dean, Government Medical College and Hospital, Aurangabad Dengi Samiti**”) , on or

before 21/03/2020.

(b) The Respondent shall submit an appeal paper book, on or before 15/06/2020.

(c) Regular Civil Appeal No. 69/2018 shall be decided by the Appellate Court as expeditiously as possible and in any case, on or before 31/08/2020.

10. Rule is discharged.

(RAVINDRA V. GHUGE, J.)

shp/-