

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CIVIL APPLICATION NO.1003 OF 2021
IN SAST/1319/2021

Anjuman Shikshan Prasarak Mandal
Uday Nagar, Lohgaon Road, Parbhani
Through Its Secretary,
Shaikh Akbar Aminsahab,
Age: 55 years, Occu.: Business,
R/o Shantiniketan Colony, Gangakhed Road,
Parbhani, Tq. and Dist. Parbhani

... Applicant

Versus

1. Chief Officer,
Municipality Parbhani,
(Now Municipal Commissioner,
Parbhani Municipal Corporation)
2. Pralhad s/o Dhondiba Chavan
Age: 39 years, Occu.: Business,
R/o. Sakhla Plot, Parbhani,
Tq. & Dist. Parbhani

... Respondents

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Mr. G. R. Syed, Advocate for applicant.
Mr. S. S. Bora, Advocate for Respondent No.1.

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CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 09.08.2021

ORDER :-

. Present application has been filed for getting the delay of 501 days condoned in filing second appeal.

2. Applicant - Appellant Society is the original plaintiff. Society had filed Regular Civil Suit No.214 of 2007 before IIIrd Joint Civil Judge Junior Division, Parbhani for perpetual injunction. The said suit came to be dismissed on 09.08.2010. Society filed Regular Civil Appeal No.17 of 2011 before learned Principal District Judge, Parbhani. The appeal came to be dismissed on 02.08.2018. Society intends to file second appeal; however there is delay, hence, this application.

3. Heard learned Advocate Mr. G. R. Syed for applicant-Society and learned Advocate Mr. S. S. Bora for respondent No. 1. Respondent No. 2, though served remained absent.

4. It has been submitted on behalf of the applicant-society that the President who was looking after the appeal expired and the society could not come to know about the dismissal of the appeal. They got the knowledge about the decision, when the respondent authority had come to remove the structure of the school. The action taken by the respondent is without adopting due procedure of law. The delay is unintentional and requires to be condoned in the interest of students also, who are studying in the school of the applicant-society.

5. Per contra, learned Advocate for respondent No.1 strongly opposed the application and submitted that the application does not say

when the President expired and when another President has taken charge. However, it appears that, that earlier President had expired in 2020; whereas the appeal was decided in 2018 itself. Therefore, an imaginary cause has been shown. The application is not *bona fide*. No reasonable much less sufficient ground has been shown for condoning the delay.

6. At the outset it can be seen that in the application, there is no mention of date of death of earlier President. Learned Advocate for applicant had tendered apology for the same, but fact remains that said President had expired in 2020. It is not the case of the applicant-society that prior to his death, said President was ill and was not taking part in the activity of the society. Therefore, there is no explanation or reason for the delay that had occurred from 02.08.2018 to 2020. Even now also the application has been filed without submitting any resolution. Another fact to be noted is that according to the applicant-society, it is running a school at the place. The facts of the case appear to be that in 2003, the society had approached defendant No.1 to allot piece of land for running school. It was sanctioned. Society started school in 2003 itself by putting partition. It had applied for erection of tin shade in 2009. Both the Courts have come to the conclusion that defendant No.1 had proved that plaintiff has encroached upon all the open space in the

land. When the fact finding Courts have considered it so, then such high handed act cannot be protected under the ground of sympathy towards students. The delay appears to be the act of carelessness on the part of school authority towards the students.

7. No reasonable, much less sufficient ground is shown to condone the delay. Hence the application stands rejected.

[SMT. VIBHA KANKANWADI, J.]

scm