

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

WRIT PETITION NO. 6669 OF 2019

PETITIONER: Sandeep s/o Ramesh Warhekar,
Aged about 43 years, Occ. Agriculturist,
R/o. Loni, Tah. Ralegaon,
District Yavatmal

...VERSUS...

RESPONDENTS: 1] Indal Gobru Rathod,
Aged about 34 years, Occ. Cultivation
R/o. Bandar, Tah. Ralegaon,
District Yavatmal

2] Vinod Gunwantrao Bhokte,
Aged about 54 years, Occ. Cultivation,
R/o. Loni, Tah. Ralegaon,
District Yavatmal

3] Raju Mahadevrao Galande
Aged about 47 years, Occ. Cultivation,
R/o. Loni, Tah. Ralegaon,
District Yavatmal

4] Anil Chindhu/Chintamanrao Lede
Aged about 49 years, Occ. Cultivation,
R/o. Loni, Tah. Ralegaon,
District Yavatmal

5] Kawdu Natthuji Sidam
Aged about 59 years, Occ. Cultivation,
R/o. Loni, Tah. Ralegaon,
District Yavatmal

6] Chandrabhan Ganpatrao Vilari
Aged about 62 years, Occ. Cultivation,

R/o. Loni, Tah. Ralegaon,
District Yavatmal

7] Rohidas Bhishta Rathod,
Aged about 54 years, Occ. Cultivation,
R/o. Loni, Tah. Ralegaon,
District Yavatmal

8] Ramesh Laxmanrao Rathod
Aged about 36 years, Occ. Cultivation,
R/o. Bandar, Tah. Ralegaon,
District Yavatmal

9] Kailash Kisan Rathod
Aged about 39 years, Occ. Cultivation,
R/o. Bandar, Tah. Ralegaon,
District Yavatmal

10] Vinod Fakira Rathod
Aged about 36 years, Occ. Cultivation,
R/o. Bandar, Tah. Ralegaon,
District Yavatmal

11] Madhukar Kisan Rathod,
Aged about 49 years, Occ. Cultivation,
R/o. Bandar, Tah. Ralegaon,
District Yavatmal

AND

WRIT PETITION NO. 6672 OF 2019

PETITIONER:

Sandeep s/o Ramesh Warhekar,
Aged about 43 years, Occ. Agriculturist,
R/o. Loni, Tah. Ralegaon,
District Yavatmal

...VERSUS...

- RESPONDENTS:**
- 1] Indal Gobru Rathod,
Aged about 34 years, Occ. Cultivation
R/o. Bandar, Tah. Ralegaon,
District Yavatmal
 - 2] Vinod Gunwantrao Bhokte,
Aged about 54 years, Occ. Cultivation,
R/o. Loni, Tah. Ralegaon,
District Yavatmal
 - 3] Raju Mahadevrao Galande
Aged about 47 years, Occ. Cultivation,
R/o. Loni, Tah. Ralegaon,
District Yavatmal
 - 4] Anil Chindhu/Chintamanrao Lede
Aged about 49 years, Occ. Cultivation,
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District Yavatmal
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District Yavatmal
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Aged about 36 years, Occ. Cultivation,
R/o. Bandar, Tah. Ralegaon,
District Yavatmal

- 9] Kailash Kisan Rathod
Aged about 39 years, Occ. Cultivation,
R/o. Bandar, Tah. Ralegaon,
District Yavatmal
- 10] Vinod Fakira Rathod
Aged about 36 years, Occ. Cultivation,
R/o. Bandar, Tah. Ralegaon,
District Yavatmal
- 11] Madhukar Kisan Rathod,
Aged about 49 years, Occ. Cultivation,
R/o. Bandar, Tah. Ralegaon,
District Yavatmal

Shri S.V.Sohoni, Advocate for petitioner in both petitions
Shri A.J.Gilda, Advocate for Respondent Nos. 1 to 11 in both petitions

CORAM : AVINASH G. GHAROTE, J.
DATE : 17/11/2021.

[Common Judgment]

1] Heard Mr. Sohoni, learned counsel for the petitioner and
Mr. Gilda, learned counsel for the respondents in both the matters.

2] **Rule.** Rule made returnable forthwith. Heard finally by
consent of the learned counsels appearing for the parties.

3] The petitions challenge the rejection of the application
for condonation of delay in filing an appeal under Section 70 of the
Maharashtra Public Trust Act, 1950, (hereinafter referred to as “the

MPT Act”) filed by the petitioner. Writ Petition No. 6669/2019, relates to a Change Report Enquiry No.269/2015 decided on 11.1.2019, to which challenge was laid by the present petitioner albeit by a delay of 3 months and 4 days. In Writ Petition No. 6672/2019, challenge has been raised to the order dated 11.1.2019 framing a scheme for administration of a Trust, again by a delay of 3 months and 4 days. In the application for condonation of delay, the reasons for delay were stated as under.

- (1) Though the applicant had appointed an Advocate to file his objection, the Advocate did not inform him about the fact that the order was passed.
- (2) The applicant was not made aware about the nature of legal proceedings which was to be initiated after the order was passed.
- (3) The Advocate for the applicant did not inform him that he was required to regularly attend the proceeding before the learned Assistant Charity Commissioner, Yavatmal.
- (4) As the applicant was not informed by his Advocate that he was required to file objection and adduce evidence, he presumed that the scheme application filed by the non-applicants was rejected and he was looking after the management of the temple because of which the applicant continuously remained absent and he did not file his objection.
- (5) The applicant came to know about the order passed by the learned Assistant Charity Commissioner, Yavatmal

when he contacted his Advocate after the non-applicants started to intervene in the management of the temple.

- (6) On 25-09-2019, the applicant made application for grant of certified copy of the order and the same was received on 05-10-2019. Thereafter the applicant approached another Advocate who explained the matter to him and advised him to file appeal. As the applicant was not having the relevant papers and as his financial condition was not good he could not file the appeal within limitation.

4] The learned Court below relying upon several judicial pronouncements, held that it was equally the duty of the petitioner to have been in touch with his counsel and having failed to demonstrate this, the matter was not worthy of condoning the delay.

5] Mr. Sohoni, learned counsel for the petitioner justifies the delay and the reasons given for condoning the same and submits that considering the quantum of the delay and the fact that the matters are required to be decided on merits and not in default, has challenged the impugned orders, which according to him are required to be quashed and set aside.

6] Mr. Gilda, learned counsel for the respondents by placing reliance upon **Habib Ahmed vr. Gulab Devi and others, 2001 SCC**

Online Rajasthan 976 [para 9]; **Chandrakant Shrimantrao Patil vrs. Vikas Balaji Parsewar, 2011 (2) Mh.L.J 94; Basawaraj vrs. Special LAO, (2013) 14 SCC 81** (para 12 and 15), **Mahendra P. Shah vrs. Gurupreet Kamaljeet, (2015) 5 Mh.L.J 207** (Para 13 (7) & (8)) and **Kanta @ Shanti Subhash Karkale vrs. Manjulabhai Tarare, 2020 (1) Mh.L.J 918**, has submitted that the conduct of the petitioner indicates total negligence on his part in the matter of prosecuting the litigation. He submits that even before the learned Assistant Charity Commissioner, the petitioner did not bother to adduce evidence as a result of which the Change Report Enquiry came to be proceeded without evidence of the petitioner on 11.12.2018. He further submits that the Change Report Enquiry ultimately came to be partly allowed, whereby the name of the original trustee namely Ramesh Annaji Patil was directed to be deleted from Schedule-1 and though it was held that the admitted position of mode of succession to the said public religious trust was hereditary one, in absence of the petitioner in the proceedings, no finding could be recorded vis-a-vis the claim made by the petitioner.

7] Further inviting my attention to the order dated 4.1.2017, passed in Application No. 10/2015, an application under Section 47 of the MPT Act, he submits that the Joint Charity Commissioner has, while allowing the application for intervention, recorded an undisputed position that the relationship of Shri Shandip Ramesh Warhekar with the expired Trustee namely Ramesh Annaji Warhekar, of being his son, was not disputed and therefore, the application for intervention was allowed which was according to him only on a prima facie basis. He further submits that the application under Section 47 of the MPT Act as filed by the Respondents being Application No. 10/2015 was rejected by the learned Joint Charity Commissioner by the order dated 17.10.2018, however, the application for framing of the scheme for administration of the trust i.e. Application No. 17 of 2015 has been allowed, which was the subject matter of challenge before the learned lower Court in respect of which the application for condonation of delay has been dismissed. He therefore submits that the entire record indicates a pathetic negligence on part of the petitioner in prosecuting the claim raised by him before the appropriate authority and therefore, the delay considering the

principles which have been stated in the above cited judgments has rightly been rejected by the Court below.

8] There cannot be any dispute with the propositions laid in the judgments cited by Mr. Gilda, learned counsel for respondents. What is also material to note is that the question of delay has to be decided on case to case basis, not only on the basis of the reasons given, but on the principle that the lis has to be finally decided on the merits. True that it is the duty of the litigant to be in touch with his counsel for a proper and expeditious decision of the lis initiated/ defended by him, however, one cannot be oblivious that the emergencies of life may not always make that possible. In the instant matter the application for condonation of delay is dated 12.06.2019, after the notification declaring the Covid Pandemic was issued on 16.03.2019. In the instant case, the delay is of 3 months 4 days in filing of the appeal before the learned appellate Court, and considering the principles as laid down in **Esha Bhattacharjee vrs. Managing Committee; (2013) 12 SCC 649** and the requirement of law that decision should always be on merits and not on default, I deem it appropriate to exercise my discretionary power to condone the delay in filing of the appeals, considering the factual position as

narrated above, that the mode of succession to the trust is hereditary one and on a prima facie basis considering the application for intervention filed by the petitioner in Application No. 10 /2015, it has been held that petitioner is a necessary party, being the son of Ramesh Annaji Warhekar.

9] It is however made clear that any observations made regarding the relationship of the petitioner in this order, would not prejudice the authorities below in determining the relationship on its own merits and deciding the lis.

10] The petitions are accordingly allowed. The impugned orders are therefore quashed and set aside and the applications for condonation of delay are allowed. There shall be no order as to costs.

JUDGE

Rvjalit

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VASANTRAO JALIT
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