

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

WRIT PETITION NO.3806 OF 2016

Maharashtra State Electricity Distribution Co. Ltd.
Head office at Prakashgad, Bandra, Mumbai,
Through its Engineer at Vrandavan Colony,
Old Jalna, Dist. Jalna. ..Petitioner

Versus

1. Rishi Steel and Alloys Pvt. Ltd.
D-52-7 Addl. MIDC Area,
Aurangabad Road, Jalna, Dist. Jalna.
2. Mahavirprasad Ratanlal Agrawal,
Age 63 yrs, Occ. Business/Director,
Rishi Steels and Alloys Pvt. Ltd.
R/o as above.
3. Radhesham Ratanlal Agrawal,
Age 58 yrs, Occ. Business
R/o as above. ..Respondents

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Mr. Dhananjay Deshpande, Advocate for the Petitioner.

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CORAM : SANDEEP V. MARNE, J.
DATED : 23rd NOVEMBER, 2022.

ORAL JUDGMENT:-

1. Rule. Rule made returnable forthwith. With the consent of the parties, matter is taken up for final hearing at the admission stage.

2. By this petition petitioner challenges order dated 11.09.2014 passed by the Civil Judge, Senior Division, Jalna thereby rejecting petitioner's application for condonation of delay seeking restoration of the suit.

3. The usual modes of service on respondents had failed. However, the learned counsel for petitioner has placed on record service affidavit to show that respondent no.3-Radhesham Ratanlal Agrawal had accepted the notice on 20.09.2017. This Court, therefore, had directed paper publication for service of notice on respondents on 01.09.2017. Accordingly, paper publication was given by petitioner for service of notice on respondents. However, respondents have failed to appear in the present petition.

4. Heard the learned counsel for petitioner. The suit of plaintiff/petitioner filed in the year 1995 was dismissed in default on 04.07.2005. The plaintiff/petitioner applied for restoration of suit by filing application on 28.01.2011. The plaintiff/petitioner also applied for condonation of delay in filing application for restoration. The application for condonation of delay has been rejected by the Trial Court accusing petitioner of lethargy, gross negligence and indifferent approach.

5. I have gone through the records of the case. In its application seeking condonation of delay petitioner had pleaded that at the time of dismissal of the suit, the office of petitioner was shifted from Aurangabad to Jalna and that the Advocate engaged by petitioner had left the profession and migrated to another place without giving intimation to petitioner. The suit was originally instituted with Maharashtra State Electricity Board. In the year 2003, the board was split into four companies and one of the resultant companies is Maharashtra State Electricity Distribution Company Limited.

6. The learned counsel for petitioner submits that the office of the Superintending Engineer of the board at Aurangabad had instituted the suit and upon splitting of the board into four companies and formation of Maharashtra State Electricity Distribution Company Limited, a office was opened at Jalna. Some time was spent in transferring the concerned records and files from the office of the then board at the Aurangabad to the office of the company at Jalna.

7. Considering the above position, I am of the view that, splitting of the board into four companies and formation of Maharashtra State Electricity Distribution Company Limited in the year 2003 could be a possible reason for miscommunication between the offices of the then board and those of resultant company during the relevant period. Considering this position, though the delay in seeking restoration of the suit is inordinate, the Trial Court could have condoned the delay.

8. Accordingly, the writ petition is allowed. The order dated 11.09.2014 passed by the Civil Judge, Senior Division, Jalna is set aside. The delay in filing application for restoration of the suit is condoned. The Trial Court to decide the application for restoration of the suit on its own merits.

(SANDEEP V. MARNE)
JUDGE