

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

WRIT PETITION NO.7480 OF 2018

**GOPAL DEVCHAND PATIL
VERSUS
NAGESH POPAT PATIL**

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Advocate for Petitioners : Mr. Vijay B. Patil
Advocate for Respondent : Mr. S. B. Bhappar

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CORAM : NITIN B. SURYAWANSHI, J.

DATE : 14th JANUARY, 2022

PER COURT :

1. Delay of 1997 days caused in filing regular civil appeal, challenging ex-parte decree passed by the learned 5th Joint Civil Judge, Senior Division, Jalgaon, in Special Civil Suit No.51/2008, was condoned by the learned District Judge-1, Bhusawal, by order dated 16-04-2018 in Misc. Application No.46/2016. The order of condoning the delay is impugned in the present petition.

2. Having heard the rival submissions of the respective parties and on going through the application seeking condonation of delay, it is clear that detailed reasons are set out in the application for seeking condonation of delay. Petitioner opposed the said application by raising various contentions. The appellate Court, after considering the rival submissions, condoned the delay, observing that sufficient reasons have

been given by the applicant for condoning the delay.

3. The learned advocate for petitioner assailed the impugned order by placing reliance on **Pundlik Jalam Patil (Dead) By LRs. Vs. Executive Engineer, Jalgaon Medium Project and Another**, reported in (2008) 17 SCC 448 and **Basawaraj and Another Vs. Special Land Acquisition Officer**, reported in 2014 AIR(SC) 746.

4. In **Pundlik Jalam Patil (Dead) By LRs.** (supra), the Hon'ble Supreme Court has held that "if the High Court finds that the respondent in its application made incorrect submission that it had no knowledge of the award passed by the reference Court, the High Court ought to have refused to exercise its discretion and the High Court should exercise its discretion on it's own grounds".

5. In **Basawaraj and Another** (supra) the same principle is reiterated and it is held that:-

"15. The law on the issue can be summarised to the effect that where a case has been presented in the court beyond limitation, the applicant has to explain the court as to what was the "sufficient cause" which means an adequate and enough reason which prevented him to approach the court within limitation. In case a party is found to be negligent, or for want of bonafide on his part in the facts and circumstances of the case, or found to have not acted diligently or remained inactive, there cannot be a justified ground to condone the delay. No court could be justified in condoning such an inordinate delay by imposing any

condition whatsoever. The application is to be decided only within the parameters laid down by this court in regard to the condonation of delay. In case there was no sufficient cause to prevent a litigant to approach the court on time condoning the delay without any justification, putting any condition whatsoever, amounts to passing an order in violation of the statutory provisions and it tantamounts to showing utter disregard to the legislature. ”

6. In the case in hand, the respondent has challenged the ex-parte decree passed against him by filing substantive documents and he should get fair opportunity to contest the matter on merits. He has given sufficient grounds for condoning the delay, which weighed with the appellate Court. The appellate Court has rightly exercised discretion in favour of the respondent. No illegality or perversity is found in the impugned order. The writ petition, being devoid of merits, is dismissed. No costs.

(NITIN B. SURYAWANSHI, J.)