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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.246 OF 2021

Shaikh Mukthar Shaikh Chand

PETITIONER

VERSUS

The State of Maharashtra and Others

RESPONDENTS

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Mr. Kiran D. Jadhav, Advocate for the petitioner

Mr. Y. G. Gujrathi, AGP for respondent - State

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[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 15th SEPTEMBER, 2022

ORDER :

1. Challenge in this petition is to the order passed by the learned District Judge-10, Aurangabad in Miscellaneous Civil Application No. 72 of 2020, thereby condoning delay of 416 days in filing the appeal.

2. Regular Civil Suit No. 820 of 2014 filed by the petitioners seeking injunction and direction against the State authorities was decreed *ex-parte* on 18th December, 2018. Said judgment and decree is challenged by the respondent – State authorities, however, by that time there was delay of 416 days in filing the appeal. Therefore Miscellaneous Civil Application was filed seeking condonation of 416 days delay. The petitioner opposed

the said delay condonation application on the ground that the delay is not properly explained and no sufficient ground is made out for condonation of delay. By the impugned order, the delay is condoned. Hence, the present writ petition.

3. Heard learned advocate for the petitioner and learned Assistant Government Pleader for the respondents.

4. Learned advocate for the petitioner, assailed the impugned order submitting that the Appellate Court has condoned the delay in absence of there being sufficient ground having been made out by the respondents. According to him, the District Court ought to have rejected the delay condonation application. He, therefore, submits that the impugned order is liable to be quashed and set aside. In support of his submissions, learned advocate for the petitioner placed reliance on :

- i. “State of Maharashtra and Another V/s Dnyandeo Chimanrao Paul and Others” 2022 DGLS (Bom) 1934*
- ii. “Union of India and Others V/s Nripen Sarma” AIR 2011 SC 1237*
- iii. “Amalendu Kumar Bera V/s State of W.B.” 2013 (4) Mh.L.J. 117.*
- iv. “State of Madhya Pradesh V/s Bherulal” (2020) 10 SCC 654*
- v. “Smt. Vaijayantabai Namdeo Patil and Others V/s The New India Insurance Company Ltd. And Others’ 2021 (5) ALL MR 184*

vi. “*Majji Sannemma @ Sanyasirao V/s Reddy Sridevi and Others*”
2022 (2) Mh.L.J. 9

5. Learned Assistant Government Pleader, representing the respondents, on the other hand, supported the impugned order. He submits that the delay is properly explained in the application. Therefore, according to him, there is no substance in the petition and the petition is liable to be dismissed.

6. On going through the application filed for condonation of delay, it is clear that lack of communication, so also receipt of notice in another office and not by the proper office are the grounds raised while seeking condonation of delay.

7. Admittedly, the suit is decreed *ex parte*. In that view of the matter, the ground raised by the respondents about belated knowledge of the decree is acceptable. This Court is of the opinion that even in the application, delay is properly explained on the ground of communication gap. The Appellate Court has rightly allowed the application, in consonance with the settled legal position that the delay is to be liberally condoned. All the more reason in the present case is that the suit is decreed *ex parte*, against the State authorities. The Appellate Court has taken care of the interest of the petitioner, by imposing costs on respondents No.1 and 2, to be paid to the petitioner. The

Appellate Court has properly exercised the discretion in allowing the delay condonation application and there is no illegality or perversity in the order impugned in the present writ petition.

8. In the judgments relied on by the learned advocate for the petitioner, the ratio is, there must be sufficient cause shown while filing delay condonation application and in absence of such sufficient cause, inordinate delay cannot be condoned. There cannot be any dispute about the said legal position. But in the present case the suit is decreed *ex parte* and communication gap along with receipt of notice by another office, are the sufficient grounds to condone the delay.

9. In the case in hand, apart from the fact that the delay of 416 days is properly explained and the same is condoned by imposing total costs of Rs.10,000/-, which is directed to be paid to the petitioner, the *ex-parte* decree is challenged and hence, this Court is not inclined to entertain writ petition, in exercise of extraordinary writ jurisdiction. Writ petition being devoid of merit is dismissed. No costs.

[NITIN B. SURYAWANSHI]
JUDGE