

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

**919 CIVIL APPLICATION NO.6493 OF 2021
IN SA/485/1995**

**NANDED MUNICIPAL COUNCIL
VERSUS
BHAGWAN GANOJI MORE AND ORS**

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Advocate for Applicants : Mr. Kurundkar Sunil V.
Advocate for Respondent Nos. 2, 5, 22, 32, 40, 43, 44 : Mr. A. S. Radikar.
Advocate for Respondent Nos. 1, 6 to 14, 19, 20, 25 to 31, 34 to 39, 41, 42,
45 to 49 : Smt. C.E. Gaikwad (absent)

CORAM : MANGESH S. PATIL, J.
DATE : 03.03.2022.

PER COURT :

Heard learned advocate Mr. Kurundkar for the applicant/appellant and learned advocate Mr. Radikar for some of the respondents. Learned advocate Smt. Gaikwad who appears for some of the other respondents is not present. The remaining respondents have been duly served but have not appeared.

2. By the conditional order dated 29.11.2011, the applicant was granted four weeks time to furnish correct and complete addresses of the unserved respondents, failing which it was directed that the second appeal would stand dismissed.

3. The condition having operated, by way of this application the applicant is now seeking restoration of second appeal by condoning the delay of almost 3000 days.

4. True it is that *ex facie* the delay is enormous. Though the applicant is a Municipal Council, the parameters as far as the application of the provisions of the Limitation Act would not be different than those applied to

the individual litigant. Be that as it may, going by the parameters laid down by the Supreme Court time and again, unless the inaction is deliberate or intentional, the request for condonation of delay should not be refused.

5. Once the second appeal is lodged, a party is expected to rely upon the advocate through whom it is preferred. This second appeal was filed in the year 1995. Obviously, for years together it was awaiting service till the date the conditional order was passed on 29.11.2011. The record and proceeding does not demonstrate that no steps were being taken till then for effecting service. There were several respondents and the notices sent on the address of the Union were being returned. Even in the present application, in spite of several attempts the notices could not be served to them and they had to be served by way of paper publication of their notices. All these circumstances clearly indicate that till the matter was dismissed by operation of the condition in the order, the applicant was prompt and vigilant. It is only thereafter that it seems to have lost sight of the litigation. Therefore, it cannot be said that the delay was intentional or deliberate. One can gainfully refer to the decision in the matter of **Perumon Bhagvathy Devaswom v/s Bhargavi Amma (Dead) Thr. Lrs. 2008 (8) Supreme Court Cases 321.**

6. Apart from the above state of affairs, it is pertinent to note that though there are concurrent findings of the two courts below, an extraordinary relief seems to have been granted in favour of the respondents by the decree under challenge. As has been mentioned in the order while admitting the appeal, though apparently it was a relief of perpetual injunction, it was slatted against the applicant-Municipal Council restraining it from undertaking any recruitment without considering the request of the respondents for the posts. Thus the Municipal Council, is being restrained by the decree under challenge from undertaking any recruitment even after lapse of so many years.

7. In view of the above mentioned facts and circumstances, the application is allowed. The second appeal is restored. After such restoration, issue notices to the unserved respondents by regular mode as also for effecting service by way of paper publication at the applicant's expense, returnable on 28.04.2022.

(MANGESH S. PATIL, J.)

mkd/-