

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

79 WRIT PETITION NO.11637 OF 2021

SACHIN SUBHAS WANI (SONGIRE)
VERSUS
MANGALABAI BHAUSAHEB MUNDADA

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Advocate for Petitioner:
Mr. Ghanshyam K. Chinchole
Advocate for Respondent/Sole: Mr. Anand Bhandari

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CORAM: SMT. BHARATI H. DANGRE, J.

DATE: 14th FEBRUARY, 2022

PER COURT:

1. The Petitioner is aggrieved by an order passed by the District Judge, Dhule on 19.03.2020, thereby refusing to condone the delay in instituting the Appeal and thereby refusing registration of his appeal.

2. The facts in the background reveal that on a Suit being instituted for possession of the Suit property against the Defendant/Tenant by the landlord on the ground of default and for recovery of arrears of due rent amount, it came to be decreed on 03.08.2017 by the Joint Civil Judge, Junior Division, Dhule. The present Petitioner was impleaded as a Defendant/Tenant.

The Appeal has been preferred by the Petitioner / the Defendant, since under the Decree he is directed to hand over the vacant possession of the Suit property and to pay due rent amount of Rs.77,325/- to the Plaintiff landlord within one month, failing which the Plaintiff was held entitled for execution.

3. While the Petitioner preferred an Appeal, delay of 13 months 14 days had occurred and he moved an application seeking condonation of the delay.

In the application he cited two reasons; firstly that he was not informed by his Counsel about the Suit being decreed and therefore he had no knowledge about the same. Other reason being projected is, that his mother is aged and ill and since she was under treatment, he had left the house premises in Dhule and had proceeded to Kalyan-Mumbai and therefore he lost track of the proceedings and was not able to establish contact with the lawyer.

Great hardship and inconvenience was pleaded if the Appeal was not allowed to be filed by condoning the delay.

4. The learned District Judge was not convinced with the reasons stated in the application and on 19.03.2020, dismissed the application by supporting the order by the reason recorded, that no proof has been brought on record justifying the delay to be condoned.

5. On perusal of the impugned order and looking to the nature of the proceedings, when it can be seen that the Petitioner/ Defendant is the tenant of the landlord since-1990 and by the impugned Judgment and Decree the Suit has been allowed as it has been held that the Defendant is in arrears of rent and on that count he is directed to hand over the vacant possession of the Suit premises. Looking into the facts and circumstances of the case I am inclined to permit condonation of delay of 13 Months 14 days since the statement made by the Applicant in the Application cannot be doubted

merely on the ground that no proof thereto has been adduced.

This indulgence however is available, subject to the statement made by the learned Counsel for the Petitioner on instructions of the Petitioner that the rent due and payable on the date of the Judgment i.e. 03.08.2017 shall be deposited by him within a period of two (02) weeks before the Appellate Court.

6. Since the Decree is in favour of the Respondent and on account of the delay in instituting the Appeal, inconvenience is posed to the landlord. The impugned order is hence set aside and the delay being permitted to be condoned, the Petitioner shall pay costs of Rs.20,000/- to the Respondent/Plaintiff within a period of two (02) weeks from today. The costs as well as the amount of rent shall be deposited in the Appellate Court within a period of two (02) weeks. As far as the amount of costs is concerned the Plaintiff is permitted to withdraw the amount on it's deposit.

7. The Appeal being instituted alongwith the Application for condonation of delay in the year-2018, shall be disposed of by the District Judge, Dhule expeditiously and in any case not later than six (06) months from today. Since the Appeal is now directed to be entertained by the Appellate Court by condoning the delay, the execution proceedings shall remain stayed till culmination of the Appeal.

[SMT. BHARATI H. DANGRE, J.]

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