

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 10732 OF 2015

Kailashnarain Shobhnath Mishra ...Petitioner

V/s.

Brihanmumbai Mahanagar Palika & Anr. ...Respondents

Mr. Vikram N. Walawalkar i/b. Mr. Gajanan D. Shinde, for the
Petitioner.

Mr. Santosh Parad, for the Respondents / MCGM.

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CORAM : G. A. SANAP, J.

DATE : 22 April 2022

P.C.

. The petitioner in this petition has challenged the order dated 2 August 2014 passed by the Additional Chief Judge of the Small Causes Court at Bombay, whereby the Marji Application No.645/2013 made for condonation of delay caused, for making an application to set aside the dismissal in default order in Municipal Appeal No.19/2003.

2. The petitioner by filing the Appeal No.19/2003 had

challenged the assessment order passed by the officer of the Municipal Corporation in 2003. The appeal remained pending till 2011. It was disposed of on 30 June 2011 for want of prosecution.

3. It is the case of the petitioner that since the year 1995, he was in disturbed state of mind. He is suffering from old age ailments. He therefore could not concentrate on day to day work. He could not contact his Advocate. In 2013, he made an inquiry with the clerk of the Advocate and thereby he came to know about the dismissal order. He thereafter applied for certified copy. When the application was filed, 14 months had already passed from the date of the order. He therefore applied for condonation of delay caused for filing the restoration application.

4. The application was opposed by the respondents. According to the respondents, sufficient cause has not been made out to condone the delay. The cause set out in the application in support of condonation of delay is imaginary. The learned Chief Judge of the Small Causes Court was not convinced with the cause and reasons stated in the application put forth by the petitioner seeking condonation of delay. The learned Judge therefore dismissed the application.

5. I have heard the learned Advocate for the petitioner and the learned Advocate for the respondent. I have gone through

the record and proceeding.

6. It is undisputed that the appeal was dismissed on 30 June 2011. The petitioner made an application for condonation of delay on 6 September 2013. It is therefore apparent that there was delay of 14 months.

7. In the submission of the learned Advocate for the petitioner, the technicality should not stand in the way of rendering substantial justice. The learned Advocate submitted that no prejudice of any nature would be caused to the respondents if the delay is condoned and an opportunity is given to the petitioner to make a prayer for setting aside the dismissal order.

8. It is to be noted that after condonation of delay, the learned Additional Chief Judge of the Small Causes Court was required to give an opportunity of hearing to both the parties in the application made for setting aside the dismissal order. That application for setting aside the dismissal order was accompanied by this application for condonation of delay. The learned Additional Chief Judge in para No.8 of the impugned order has recorded reasons for rejecting the prayer. The learned Judge has observed that in support of the ground pleaded in the application, the petitioner did not produce the documents. The learned Judge was therefore not satisfied with the submission.

The petition is pending since 2015. It is to be noted that if indulgence sought for by the petitioner had been granted, the main matter would have been finally disposed of by this time. It is to be noted that while deciding the application for condonation of delay, the merits or demerits of the main matter can be gone into. The question in this case is as to whether the interest of justice would be met by rejecting the petition. In my view, the rejection of the writ petition would not serve the interest of justice. It is true that in this case there is delay of 14 months. The order impugned in the appeal was with regard to the assessment of the property tax.

9. The order of assessment of tax in certain circumstances involve serious financial implications. In this view of the matter, in my opinion, the learned Additional Chief Judge of the Small Causes Court ought to have condoned the delay by imposing cost. No prejudice would be caused to the respondents. The respondents, in any case, would got opportunity to meet a case of the respondents. In view of this position, I am inclined to allow the petition in the following terms.

ORDER

- (i) The petition is allowed.
- (ii) The impugned order dated 2 August 2014 rejecting the Marji Application No.645/2013 is set aside.
- (iii) The Marji Application No.645/2013 is

allowed.

(iv) The delay caused for making application for setting aside the dismissal order is condoned.

(v) In the peculiar circumstances, the petitioner shall pay the cost of Rs.10,000/-. The cost shall be payable to the Maharashtra State Legal Services Authority within one month from today.

(vi) If the cost is not deposited within one month, the order rejecting the application for condonation of delay dated 2 August 2014 shall stand restored.

(G. A. SANAP, J.)