

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.4600 OF 2022

Madhukar Sakharam Khandare

...Petitioner

Versus

Dhondiba Sampat Gaikwad

...Respondent

Mr. C.S. Deshmukh, Advocate for the petitioner.

Mr. S.P. Salgar, Advocate for respondent.

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[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 10th APRIL, 2023

ORDER :

1. The petitioner is aggrieved by the order passed by learned District Judge-1, Parbhani, in Civil Miscellaneous Application No. 29/2020, thereby allowing application for delay condonation, filed by the respondent.

2. Petitioner/original plaintiff filed Regular Civil Application No. 59 of 2017 for recovery of possession, mesne profit and perpetual injunction. The suit was decreed by the Trial Court by judgment and decree dated 10.09.2018. Being aggrieved by same, defendant filed appeal along with delay condonation application. Delay condonation application was

allowed by the Appellate Court after hearing the parties and by imposing cost of Rs. 3,000/-. The petitioner is aggrieved by this order.

3. Having heard the learned advocate for the petitioner, learned advocate for the respondent and on going through the grounds raised in the writ petition, documents annexed thereto and the impugned order, I am of the opinion that there is no illegality or perversity in the order impugned in the present petition.

4. The Appellate Court has condoned the delay considering the fact that it is an ex parte decree. Admittedly, respondent would not have gained any benefit by belatedly approaching the Appellate Court. Record further reveals that respondent appeared in the execution petition promptly. While condoning the delay cost of Rs. 3,000/- is imposed by the Appellate Court on the respondent. The Appellate Court has rightly exercised discretion in favour of respondent/defendant. It is informed at the bar that by consent of both the parties regular civil appeal is fixed for final arguments on 29.04.2023.

5. In the light of aforesaid, no case is made out by the petitioner to exercise extra ordinary writ jurisdiction. Writ petition being devoid of merit is dismissed.

[NITIN B. SURYAWANSHI, J.]