

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.5450 OF 2023

Ratnamala Ramchandra Chidrawar

...Petitioner

Versus

Kamalbai Bhagwanrao Dhamdhare
Died Through Lrs Anil Bhagwanrao
Dhamdhare And Others

...Respondents

Mr. S.J. Salunke, Advocate for the Petitioner.

.....

[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 9th JUNE, 2023

ORDER :

1. The petitioner is aggrieved by the order passed by learned District Judge-3, Ambajogai, below Exhibit-1 in Civil Miscellaneous Application No. 63/2022, thereby condoning the delay of six days in preferring appeal.

2. The contention is that the suit took 22 years for decision and it was partly decreed. The defendants were directed to pay an amount of Rs. 5,00,000/- within one month to the plaintiff. Said amount is not deposited in terms of decree and appeal was preferred by defendants with a delay of six days. The plaintiff while opposing the delay condonation application argued

before the Appellate Court that defendants be directed to deposit decretal amount and subject to that condition condonation of delay may be considered.

3. The Appellate has condoned the 6 days delay holding that said contention of the plaintiff can be considered at the time of deciding stay application.

4. Learned advocate for the petitioner by relying on *Shyamal Kanti Danda v. Chunilal Choudhary*, AIR 1984 Supreme Court 1732, contends that the Appellate Court ought to have directed the defendants to deposit decretal amount and on that condition the Appellate Court should have condoned the delay.

5. Heard the learned advocate for the petitioner. Perused the memo of writ petition, annexures thereto, impugned order and the citation relied upon by the learned advocate for the petitioner.

6. The Appellate Court while condoning the delay has observed that, there appears unintentional delay on the part of the appellants in filing appeal and though, appellants have not

deposited the decretal amount, at the time of considering the stay application, after registration of appeal, appropriate orders will be passed. No fault can be found with the approach of the Appellate Court.

7. In Shyamal Danda (supra), the decision was rendered in different facts. It was an appeal against eviction suit and there was delay of 386 days in filing the same. In these facts, the delay condonation application was allowed by the Apex Court subject to the tenant fully complying with the condition of depositing use and occupation charges on specified dates.

8. Such are not the facts of the present case, therefore, this ruling would not help the petitioner. There is no illegality or perversity in the order impugned in the present petition. No case is made out by the petitioner to warrant exercise of extraordinary writ jurisdiction. The writ petition being devoid of merit is dismissed.

[NITIN B. SURYAWANSHI, J.]