

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

WRIT PETITION NO.12508 OF 2023

- 1] Maheshkumar Maganlal Agrawal
Age: 62 years, Occu. Business,
R/o. 3248, Purti Building, Agra Road,
Dhule.
- 2] Sangitadevi Maheshkumar Agrawal
Age: 56 years, Occu. Business,
R/o. 3248, Purti Building, Agra Road,
Dhule.
- 3] Vaishali Maheshkumar Agrawal
Age: 34 years, Occu. Service,
R/o. 3248, Purti Building, Agra Road,
Dhule.
- 4] Mukund Narayan Joshi
Age: 79 years, Occu. Retired,
R/o. 2/268, Subhash Nagar,
Old Dhule.

...Petitioners
(Orig. Applicants)

Versus

- 1] The Assistant Charity Commissioner
Jalgaon Region, Jalgaon,
Dr. Ambedkar Market,
District – Jalgaon.
- 2] The Joint Charity Commissioner,
Nashik Region, Nashik,
Janki Plaza, Near Kharbanda Park,
District – Nashik.

...Respondents
(Orig. Respondents)

...
Ms. Tanvi Jadhav, Advocate h/f Mr. Subodh P. Shah, Advocate for
Petitioners
Mr. Y. G. Gujrathi, AGP for Respondent Nos.1 and 2
...

CORAM : NITIN B. SURYAWANSHI, J.

DATE : 10th OCTOBER, 2023

ORAL JUDGMENT :

1. Leave granted to correct prayer clause.
2. Rule. Rule made returnable forthwith. Heard finally by consent of the parties. Learned Assistant Government Pleader waives service for respondent Nos.1 and 2.
3. This petition filed under Article 227 of the Constitution of India, impugns order dated 08/01/2021, passed by learned District Judge-1, Amalner, in Civil Misc. Application No.30/2017, thereby rejecting application filed by petitioners for condonation of delay in applying for restoration of Civil Misc. Application No.08/2011.
4. In Sou Moto Inquiry No.05/2008, held under Section 41(D) of Maharashtra Public Trusts Act, 1950, respondent No.2 Joint Charity Commissioner, Nashik, by order dated 27/01/2011, held petitioners guilty of misappropriation of Trust's fund and directed their removal from Managing Body of Trust. Petitioners challenged this order by filing Civil Misc. Application No.08/2011 before District Court, Amalner. This application was dismissed in default by order dated 19/01/2016, as petitioners remained absent when matter was called out repeatedly. Petitioners, thereafter, filed Civil Misc. Application No.30/2017 seeking condonation of 22 months' delay in

applying for restoration of Civil Misc. Application No.08/2011. This application is dismissed by learned District Judge. Hence, present petition.

5. Heard learned advocate for petitioners and learned Assistant Government Pleader for respondent Nos.1 and 2. Perused writ petition memo, annexures thereto and impugned order.

6. In application for condonation of delay, petitioners have contended that petitioner No.1 is residing at Jaipur, Rajasthan, since last 7 to 8 years, therefore, he has come to know about dismissal of matter recently. Petitioner Nos.2 to 4 are residents of Dhule and they were also not aware about dismissal of application in default. When petitioner No.1 came for Diwali festival, he came to Amalner and inquired about the matter with their advocate and then he came to know about dismissal of application in default. Delay caused in approaching the Court is not deliberate or intentional and therefore, it may be condoned. District Court has rejected said application holding that, no acceptable reason for delay is given by petitioners.

7. Since petitioners are held guilty of misappropriation of Trust's fund and they are removed from Managing Body of Trust, their civil rights are affected. Civil Misc. Application No.08/2011, in which order passed by second respondent is impugned, is therefore,

required to be heard and decided on merit. Petitioners need to be given fair opportunity to assail the order passed by second respondent on merit. This opportunity is denied by District Court by rejecting delay condonation application of petitioners.

8. Impugned order is contrary to settled legal position that delay is to be liberally condoned. District Court ought to have adopted liberal approach in condoning delay. Impugned order amounts to denial of fair opportunity to assail order passed by second respondent on merit. The same is, therefore, unsustainable. In the result following order:-

ORDER

- (I) Writ petition is allowed.
- (II) Impugned order dated 08/01/2021, passed by learned District Judge-1, Amalner, in Civil Misc. Application No.30/2017, is hereby quashed and set aside.
- (III) Civil Misc. Application No.30/2017 is allowed, subject to petitioners paying cost of Rs.10,000/-, to be deposited in Government Pleaders' Library, High Court of Bombay Bench at Aurangabad.

Rule is made absolute in above terms.

(NITIN B. SURYAWANSHI, J.)