

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.15567 OF 2019

Vilas s/o. Digambar Dolse,
Age 48 years, Occu. Editor,
Dainik Patoda Sanchar, Patoda,
Taluka Patoda, District Beed

.. Petitioner
(Original Defendant)

Versus

Navnath Dnyanoba Shinde,
Age 53 years, Occu. Service,
Zilla Parishad, Construction Department,
P.W.D. Washim, Taluka Washim,
At present R/o. Public work Department (2)
Nagar Road, Beed

.. Respondent

Mr. N. I. Jadhav, Advocate for Petitioner (through V.C.);
Mr. S. A. Ambad, Advocate for Respondent

CORAM : S. G. MEHARE, J.

DATE : 17-10-2023

PER COURT :-

1. Heard the learned counsel for the petitioner.
2. The petitioner has filed cross-objection memo under Order XLI, Rule 22(2) of the Code of Civil Procedure.
3. The learned Ad hoc District Judge-3, Latur rejected the application (Exhibit-14) on the ground that the petitioner never sought for condonation of delay caused to prefer cross-objection/appeal.

4. The learned counsel for the petitioner would submit that separate application for condonation of delay was filed. However, the Court, while considering the said application erroneously held that there is no condonation of delay application for preferring an cross-objection. The copy of the said application is attached with record.

5. The learned counsel for the respondent would submit that the cross-objection was not in proper form. Hence, the learned Ad hoc District Judge has correctly dismissed the application. He would submit that no delay was sought at the time of filing of the cross-objection. He would submit that the impugned order is legal, correct and proper and does not warrant interference.

6. The learned Ad hoc District Judge decided the application for cross-objection (Exhibit-14) on 16.10.2019. The certified copy of the application (Exhibit-18) under Section 5 of the Limitation Act has been filed on record. It was specifically prayed that the application for condonation of delay in filing cross-appeal may kindly be condoned. It was the application dated 31.07.2019, means this application was pending before the Ad hoc District Judge, Latur before the date of order below application (Exhibit-14). The finding of the learned Ad hoc District Judge-3, Latur, that the respondent had never sought for the condonation of delay in this regard, is illegal. The writ petition deserves to be allowed.

Hence, the order:-

ORDER

- i) The writ petition is allowed.
- ii) The order below application (Exhibit-14) in Regular Civil Appeal No.123 of 2015 dated 16.10.2019, is quashed and set aside.
- iii) The learned Ad hoc District Judge-3, Latur, is directed to consider application (Exhibit-18) along with application (Exhibit-14) and decide those applications afresh by giving an opportunity to the respective parties, within three months from the date of receipt of this order.

**(S. G. MEHARE)
JUDGE**

rrd