

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 1401 OF 2022

SANTOSH
SUBHASH
KULKARNI

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Chhabu Hriba Mane

...Petitioner

Versus

Bharat Shikshan Prasarak Mandar & ors.

...Respondents

Mr. Dilip Bodake, for the Petitioner.

Mr. Anil Kalekar, for the Respondent No.1.

CORAM: N. J. JAMADAR, J.

DATED : 19th APRIL, 2023

Oral Order:-

1. Heard Mr. Bodake, the learned Counsel for the petitioner and Mr. Kalekar, the learned Counsel for respondent No.1.
2. The legality, propriety and correctness of an order passed by the learned Presiding Officer, Savitribai Phule, Pune, Shivaji and Solapur University and College Tribunal at Pune, on 14th January, 2019 on an application for condonation of delay in preferring the appeal whereby the said application came to be rejected, is assailed in this petition.
3. The principal grievance of the petitioner is that the application for condonation of delay was rejected adverting to the merits of the matter while the petitioner was not present before the Tribunal on the date when the application was taken

up for hearing. In that event, at best, the Tribunal could have rejected the application for condonation of delay for want of prosecution and not after entering into the merits of the matter.

4. Mr. Bodake would urge that the powers of the Tribunal are akin to that of the Appellant Court under the Code of Civil Procedure, 1908. The provisions of Order 41 Rule 17 of the Code precludes the Appellate Court from deciding the appeal on merits in the absence of the appellant. Therefore, the impugned order which decides the application and by implication the appeal itself on merits is clearly erroneous.

5. Mr. Kalekar endeavoured to impress upon the Court that the petitioner had persistently remained absent before the Tribunal, whilst the petitioner continued to have correspondence with various authorities. There is no reason much less justifiable as to why the petitioner was absent before the Tribunal when the application was taken up for hearing. Mr. Kalekar further submitted that there was a huge delay of 6 years and 14 days and no sufficient cause was ascribed for the delay, and, therefore, the Tribunal was justified in passing the impugned order.

6. Under Section 82(2) of the Maharashtra Public Universities Act, 2016 for the purpose of hearing and disposal of appeal, the

Tribunal shall have the same powers as are vested in an Appellate Court under the Code of Civil Procedure, 1908 and shall also have the powers to stay the operation of any order against which an appeal is made.

7. It could be urged that the entire Code, as such, does not apply. Nonetheless the principles analogous to the principal provisions of the Code govern the procedure of the Tribunal. On first principles an Appellate Court, under the Code, cannot decide an appeal on merits, in the absence of the appellant. It is, however, open to dismiss the appeal for default in appearance.

8. I have perused the impugned order. The learned Presiding Officer of the Tribunal has delved into the merits of the matter. If the Tribunal was of the view that the matter did not merit adjournment, the application could have been dismissed for want of prosecution. However, without hearing the applicant, the application could not have been dismissed by delving into the merits of the matter. It is, therefore, necessary to interfere with the impugned order.

9. Hence, the following order:

: O R D E R :

(i) The petition stands allowed.

- (ii) The impugned order dated 14th January, 2019 passed in M.A. No.1 of 2018 stands quashed and set aside.
- (iii) M.A. No.1 of 2018 stands restored to the file of the Presiding Officer, University and College Tribunal, Pune.
- (iv) The Tribunal is requested to decide the application for condonation of delay on its own merits and in accordance with law.
- (v) The parties shall appear before the Tribunal on 6th June, 2023.

No order as to costs.

[N. J. JAMADAR, J.]