



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

910 WRIT PETITION NO. 3166 OF 2025

**AKASH VIJAY BABHALE AND ANOTHER
VERSUS
VIKRAM JAGDEVRAO SHINDE AND ANOTHER**

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Mr. Kolpe Mahendra B., Advocate for the Petitioner
Mr. Sanket S. Kulkarni a/w Mr. Riya Pande h/for Mr. R. D.Raut,
Advocate for Respondent No.1

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CORAM : S. G. CHAPALGAONKAR, J.

DATE : 02.07.2025

PER COURT :-

1. Heard learned Advocates appearing for both sides.
2. The present writ petition takes exception to order dated 22.01.2025 passed by learned Principal District Judge, Osmanabad on application below Exhibit-1 in Civil Miscellaneous Application No.275 of 2023 by which the prayer of petitioner for condonation of delay caused in filing restoration application has been rejected.
3. Petitioners are the defendants in Special Civil Suit No.41 of 2011, it was a suit for specific performance of contract. On 14.02.2012, learned trial court decreed suit directing specific performance of contract. The aforesaid decree is assailed by petitioners before learned District Judge by filing Regular Civil Appeal along with application for condonation of delay. It appears that said application came to be dismissed for want of prosecution vide order dated

02.11.2017 observing that applicants failed to argue the matter in spite of several chances. Thereafter, petitioners filed Miscellaneous Civil Application No.275 of 2023 seeking restoration of Misc. Civil Suit No.55 of 2015 by condoning delay caused in filing application for restoration. Apparently, there is delay of 5 years and 11 months for filing application for restoration.

4. A perusal of application shows that applicant contends that he is in government service and he was not in contact with his Advocate and therefore could not provide necessary instructions. It is further submitted that from 2020 to 2021 there was Covid situation. However, when order for delivery of possession was passed in Special Darkhast No.195 of 2012, petitioner came to know about the order of dismissal and thereafter filed present application.

5. Learned District Judge has elaborately considered aforesaid reasons and found that applicant failed to make out Sufficient cause to condone inordinate delay of about 5 years and 11 months observing that if applicant is a government servant, it is difficult to believe that he was not in contact with his Advocate and even it is accepted that he could not establish contact with advocate, this can be attributed to his own negligence and lethargic approach.

6. It is trite that while considering application for condonation of delay, Court is required to first find out if sufficient cause is made out, although liberal approach is expected principles of equity cannot be applied. In such matter, negligence or lethargic approach of parties cannot be ignored. In present case, there is absolutely no explanation to condone inordinate delay of about six years for filing application for restoration. Pertinently, appeal itself was filed with huge delay. The application seeking delay condonation was not diligently prosecuted, hence same is dismissed in default. Present application is filed only when execution of decree reached to final stage without justifying inordinate delay by cogent reasons.
7. In that view of the matter, there is no merit in this petition. Hence, writ petition stands rejected.

[S. G. CHAPALGAONKAR, J.]

HRJadhav