



drp

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.9175 OF 2012

Sopan Ramkrishna Nirmal
Age-47 years, Occ - Nil
R/o Pimpri Nirmal, Taluka - Shrirampur
District - Ahmednagar

PETITIONER

VERSUS

Pravara Medical Trust, Loni
Taluka - Shrirampur,
District - Ahmednagar
Through its Managing Trustee & Secretary

RESPONDENT

.....
Mr. L. V. Sangit, Advocate for the Petitioner
Mr. A. V. Hon, Advocate for Respondent
.....

[CORAM : MANJUSHA DESHPANDE, J.]

DATE : 11th MARCH, 2025

JUDGMENT :

1. Rule. Rule is made returnable forthwith. Heard finally with the consent of the learned Advocates for the parties.
2. By filing this Writ Petition, the Petitioner has challenged order dated 24th July, 2012 passed by the Industrial Court, Ahmednagar in Miscellaneous Application No. 10 of 2010.
3. Learned Advocate for the Petitioner submits that, the Petitioner has filed Complaint ULP No. 43 of 1997 and it was tagged along with other similar Complaints No. 248 of 1996, 117 of 1997, 131 of 1997, 235 of 1997 and 153 of 1997. Thereafter,

the matter was heard along with other matters. It was posted for evidence on 17th June, 2005, however, the petitioner could not remain present. Hence, he filed application Exhibit-U-13 for adjournment, which was rejected by the Industrial Court on the very same day and dismissed the Complaint filed by the Petitioner in default.

4. Since the Complaint was listed for evidence along with some other matters, therefore, the Petitioner was not aware about order of dismissal of the Complaint. When the Respondent approached this Court by filing Writ Petition No. 7102 of 2009, the Petitioner came to know that the Complaint filed by him has been dismissed in default. Thereafter, he applied for the certified copy and filed Miscellaneous Application No. 10 of 2010 on 8th October, 2010 praying for restoration of the Complaint. It is stated in the application that only after decision in Writ Petition No. 7102 of 2009 filed by the Respondent, the Petitioner came to know about the dismissal of his Complaint. Thereafter, he filed application for certified copy and after receiving certified copy, he has filed the Miscellaneous Application.

5. Miscellaneous Application No 10 of 2010 filed by the Petitioner was opposed by the Respondent, by filing say, contending that the application is barred by limitation and the

Petitioner has not given just and proper explanation for the delay caused in filing the application.

6. Thereafter, the Industrial Court framed issue and the Application is decided by a common judgment along with two other applications, vide order dated 24th July, 2012. The Industrial Court has dismissed the application on the ground that though the original Complaint was dismissed on 17th June, 2005, the Petitioner had not taken any steps till 8th October, 2010 to obtain certified copy of the order, though he got knowledge about dismissal of the Complaint on 27th October, 2008. Even then application for certified copy was filed on 27th August, 2010 and no reason is assigned for the delay.

7. In the aforesaid background, the Industrial Court has observed that, this exhibits lethargy on the part of the Petitioner, he is not diligent about his rights and even otherwise, considering that Industrial Court has no power to grant application for restoration after expiry of 30 days from the date of knowledge of dismissal of Complaint. The Miscellaneous Application No. 10 of 2010 has been dismissed by the Industrial Court on the ground that it is not filed within prescribed period of limitation.

8. Therefore, the Petitioner has filed the present Writ Petition.

This Court, vide order dated 17th February, 2014, allowed the Writ Petition and quashed and set aside the order dated 24th July, 2012 passed by the Industrial Court in Miscellaneous Application No. 10 of 2010.

9. Thereafter, the has Respondent filed Review Application Stamp No.11398 of 2014. This Court, by order dated 18th July, 2014, allowed the Review and recalled order dated 17th February, 2014 and restored the Writ Petition to its original position, by relying on judgment in the case of ***“Dilip Vitthalrao Jogdand V/s Vaidyanath Urban Co-op Ban Ltd” 2007 II CLR 293.***

10. In the judgment in ***“Dilip Vitthalrao Jogdand”*** (supra), this Court has held that, delay cannot be condoned by Industrial Court as it does not have such powers under section 31 (2) of the the MRTU and PULP Act, 1971 to condone delay beyond 30 days after passing of *ex parte* order. Relying on the said judgment, this Court has recalled the order dated 17th February, 2014.

11. Learned Advocate for the Petitioner submits that thereafter, issue whether the Industrial Court has power to condone delay if an Application under section 31 (2) of the MRTU and PULP Act is made after a period of 30 days from the date of *ex parte* order, was referred to the Division Bench in ***“Maharashtra State Cotton Marketing Employees Co-***

operative Spinning Mill Limited V/s Satish Narayanrao Gawande” 2022 (1) Bom CR 68. The Reference Court has answered the Reference as under :

“14. The answer to question no.1, thus is that the period of 30 days as mentioned in Section 31 (2) of the Act of 1971 is to be counted not from the date of the ex parte order passed under Section 31 (1) but from the date of receipt of the certified copy of the ex parte order, which would be irrespective of the distance or time lag between the date of passing of the ex parte order and receipt of the certified copy thereof and the Court is empowered to entertain the same and set aside the ex parte order, upon receipt of such an application.

12. In the Reference, it has been held by this Court that irrespective of the distance or time lag between the date of passing of the *ex parte* order and receipt of the certified copy thereof and the Court is empowered to entertain application for condonation of delay and set aside the *ex parte* order upon receipt of such an application. This Court has categorically held that the period of 30 days mentioned in Section 31 (2) of the MRTU and PULP Act is to be computed not from the date of *ex parte* order, but from date of receiving certified copy. Section 31 (2) of the MRTU and PULP Act is reproduced herein below

“31 (2) Where any order is made ex parte under sub-section (1), the aggrieved party may, within thirty days of the receipt of the copy thereof, make an application to the Court to set aside such order. If the Court is satisfied that there was sufficient cause for non-appearance of the

aggrieved party, it may set aside the order so made, and shall appoint a date for proceeding with the matter:

Provided that:, no order shall be set aside on any such application as aforesaid, unless notice thereof has been served on the opposite party.”

13. Learned Advocate for the Petitioner, relying on **“Maharashtra State Cotton Marketing Employees Co-operative Spinning Mill Limited”** (supra), points out that the order, relying upon which this Court has recalled the order dated 17th February, 2014, has also been considered by the Division Bench, while answering the issue under reference. Even the earlier order dated 17th February, 2014 passed by this Court is also referred by this Court while answering the Reference and after taking into consideration all the aspects, the reference has been answered.

14. It is the contention of the learned Advocate for the Petitioner that the substantive rights of the Petitioner are at stake. The Petitioner is not going to gain any benefit by causing delay in filing Miscellaneous Application for restoration. The Petitioner has categorically stated that since he had no knowledge of the order of dismissal of his Complaint, he had not filed the restoration application within time. Upon getting knowledge about the dismissal of the Complaint, he has filed application for obtaining certified copy and on receiving the

certified copy has immediately filed the restoration application. Therefore, in the interest or justice, the order passed by the Industrial Court be quashed and set aside. He further submits that even otherwise, this Court had in fact allowed the Writ Petition, however, in the review application, the said order has been recalled.

15. Per contra, learned Advocate for the Respondent contends that though the Petitioner had knowledge about dismissal of Complaint on 27th October, 2008, he had filed application for certified copy on 27th October, 2010, which shows the lethargic approach on the part of the Petitioner and hence, the Petitioner does not deserve any sympathy. He relies on the say filed by the Respondent before the Industrial Court in order to support the order passed by the Industrial Court.

16. I have heard learned advocates for the respective parties and perused the judgment in **“Maharashtra State Cotton Marketing Employees Co-operative Spinning Mill Limited** (supra). Order in **Dilip Vitthalrao Jogdand** (supra) relying on which this Court has recalled order dated 17th February, 2014 is no more a good law in view of the observations made by this Court in para 14 of **“Maharashtra State Cotton Marketing Employees Co-operative Spinning Mill Limited** (supra),

which are reproduced above.

17. Therefore, in my view, when this Court has already taken a view on merits of the matter vide order dated 17th February, 2014, the same needs to be maintained. This Court, in paragraphs No. 9 and 10 of the order dated 17th February, 2014 has observed as under:

“9. In the present case, it appears that an application had been moved at the instance of advocate of the petitioner to adjourn the date on 17-06-2005 itself, yet order came be passed on very same day. It is further referred to that advocate has informed about dismissal order yet such information had not been received by the petitioner till 27-08-2010. This fact perhaps had gone uncontested. Even otherwise, this Court has considered in the judgment and order referred to above and has observed that:

“4. Several other contentions are raised, about the laxity, the approach of the petitioners- employees as the raise from slumber owing to the order of the Apex Court, where majority of the employees of the respondents were showered with the benefit of out of Court settlement and resultantly, the other employees thought identical benefits. These aspects are ground realities, need not be controverted. The news item published in local newspaper gave certainly an alarm of awakening to the petitioner to rush to the Court and know what has happened.”

10. In addition, it may be noted that the petitioner was not going to be benefited by deliberately delaying approaching the Industrial Court or for that matter to make an application for certified copy thereof. In such a case, interest of justice can be met with by

awarding reasonable costs for remedying the situation in present context.”

18. Considering that the valuable rights of the Petitioner are at stake and he is not going to be benefited by causing delay in filing his own proceedings, the delay occurred requires to be condoned in the interest of justice. Since issue about condonation of delay in filing application for restoration has already been answered in the reference and the delay has been explained in the application filed by the Petitioner, I agree with the view taken by this Court while passing order dated 17th February, 2014. As a result, the Writ Petition deserves to be allowed. Learned Advocate for the Petitioner places on record copy of receipt dated 19th March, 2014 by which cost of Rs.5000/- directed by this Court vide order dated 17th February, 2014 has been deposited. The copy of taken on record and marked “X” for the purpose of identification.

19. For the aforestated reasons, the Writ Petition is allowed in terms of prayer clause “A”. Rule is made absolute in above terms.

20. At this stage, learned Advocate for the Respondent requests to grant stay to this order for a period of four weeks. However, considering the fact that the matter is pending from 2012 and the original complaint is of the year 1997, I do not find

any merit in the request. The request for stay is therefore, refused.

**[MANJUSHA DESHPANDE_]
JUDGE**

drp/wp9175-12.doc