



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 12832 OF 2024

Vidya Suresh Kulkarni

....Petitioner

VERSUS

Shankar Mansingh Madare & others

.....Respondents

Mr. S. S. Kulkarni, Advocate for the Petitioner.

Mr. S. N. Kendre, AGP for the State.

Mr. L. B. Palod, Advocate for Respondent No. 1.

CORAM : R. M. JOSHI, J.

DATE : 23rd SEPTEMBER, 2025.

PER COURT :

1. This Petition takes exception to the order dated 19.09.2024 passed in Misc. Civil Application No. 171/2023 solely in the ground that without Respondent/original Applicant having substantiated the case for condonation of delay by leading evidence, the order impugned came to be passed.

2. Learned counsel for Petitioner, to support his submissions that it is impermissible to condone delay without substantiation thereof, has placed reliance on following judgments :-

- (i) Holya Lasha Mahale and others vs. Raghunath Holya Mahale
2007(1) BomCR 506

- (ii) Nanasaheb Maliba Chaudhari vs. Suryabhan Nana Choudhari
and others
(Writ Petition No. 9663/2024 decided on 28.11.2024)

3. Learned counsel for Respondent though does not dispute the position of law, however, he contends that pursuant to the order impugned, the amount of cost has been deposited so also the appeal is registered. It is his contention that having regard to the fact that delay is of 89 days only, condonation of the same be not interfered with.

4. There cannot be any dispute made with regard to the preposition of law that the party preferring application for condonation of delay needs to substantiate the same. Admittedly, here in this case, no evidence is led by the Plaintiff and the Appellate Court has allowed the application on the basis of averments made in the application. This Court, therefore, finds no reason for rejecting the contention of learned counsel for the Petitioner that this is a fit case for causing interference in the impugned order and permitting the parties to lead evidence before the Appellate Court.

5. In the result, the order impugned stands set aside. Misc Civil Application No. 171/2023 is relegated back to the Appellate Court for decision afresh after giving an opportunity to lead evidence to the parties. Petition stands disposed of in above terms.

(R. M. JOSHI)
Judge

dyb