



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

**908 CIVIL APPLICATION NO. 10 OF 2025
IN COMAP/12/2019**

**M/S HULE CONSTRUCTION PVT. LTD. THROUGH IT S MANAGING
DIRECTOR MR. VISHWANATH DAGDOBA HULE**

VERSUS

**THE STATE OF MAHARASHTRA WATER RESOURCES DEPT. THRU.
ITS PRINCIPAL SECRETARY**

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Advocate for Applicant : Mr. Singh J.N.
AGP for Respondents-State: Mr. V. M. Kagne

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**CORAM : MANGESH S. PATIL &
PRAFULLA S. KHUBALKAR , JJ.**

DATE : 03.01.2025

PER COURT :

Heard.

2. Learned advocate Mr. J. N. Singh for the applicant who is original appellant in Commercial Appeal No. 12 of 2019 and also learned AGP.

3. By way of this composite application, the appellant is seeking restoration of the Commercial Appeal, which has been dismissed for want of prosecution by the order dated 20.04.2023, together with a prayer for condoning the delay in seeking restoration.

4. Learned Advocate Mr. Singh submits that due to his illness, he could not remain present on due date i.e. 20.04.2023 and that resulted in dismissal of the appeal for non-prosecution. He submits that due to the fault of an officer of the Court, a party may not be allowed to suffer. He further submits that he was ill for one and half month and could not attend the Court. He could not get the knowledge of the order in time and that has caused the delay. It was neither intentional nor deliberate. The applicant/appellant would suffer irreparable and grave loss if the appeal is not restored and decided on its own merits.

5. Learned AGP opposes the application on the ground that there is no sufficient and cogent reason for condoning the enormous delay of more than one and a half year.

6. A bare look at the application would demonstrate that it is *sans* any reasons much less sufficient, to demonstrate that the delay has occasioned unintentionally. There is not even a cause being put forth for condoning the delay. The entire emphasis is to demonstrate the reasons for the learned advocate for not remaining present before the Court when the impugned order was passed. In fact, applicant/appellant is supposed to explain each day's delay. Though it is trite that a pragmatic view has to be taken rather than a pedantic one, and giving a discount, it is not expected that

technically there has to be precise explanation of every day's delay but there has to be some reasonable and plausible cause for not seeking restoration in time. Accepting the fact that the applicant's/appellant's advocate was ill, the application also does not make any attempt to explain as to why the applicant/appellant itself could not get the knowledge of the order passed on 20.04.2023 which according to the CIS, was uploaded on the website on 24.04.2023 itself.

7. In the wake of the fact that the impugned order was uploaded on the website and the case status could have been easily accessed by anybody right from 24.04.2023, the statement in the application in paragraph no. 4 mentioning that the learned advocate could not get the knowledge of the order, is palpably incorrect. Even there is conspicuous absence of any effort on the part of applicant/appellant itself in getting the knowledge of the case status from the CIS.

8. Though it is trite that a party is not to gain anything by allowing his cause to be defeated on technicalities, it is equally trite that there has to be an attempt to demonstrate that there was some sufficient cause which prevented it from moving an application in time. Though harsh, the provisions of the Limitation Act, will have to be applied with all the rigours.

9. We cannot lose sight of the fact that the applicant/appellant is a private limited company and the dispute is of a commercial nature. When the law mandates a commercial appeal to be decided within six months, it is evident that applicant/appellant has been remiss in prosecuting the appeal which has been dismissed in default.

10. In the absence of sufficient cause, the application is rejected.

(PRAFULLA S. KHUBALKAR, J.)

(MANGESH S. PATIL, J.)

jhs/