



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

WRIT PETITION NO. 4549 OF 2024

Municipal Council Higanghat,
Through its Chief Officer,
Tal. Higanghat, Dist. Wardha.
[Org. Defendant]

....PETITIONER

....VERSUS....

Shri Pravin S/o Babarao Jagtap,
Aged about 41 years, Occu. Business,
R/o : Mahatma Fule Ward, Higanghat,
Tal. Higanghat, Dist. Wardha.
[Org. Plaintiff]

....RESPONDENT

WITH

WRIT PETITION NO. 4545 OF 2024

Municipal Council Higanghat,
Through its Chief Officer,
Tal. Higanghat, Dist. Wardha.
[Org. Defendant]

....PETITIONER

....VERSUS....

1. Shri Shrichand S/o Asardas Dardai
Aged about 76, Occu. Business

2. Shri Sunil S/o Shrichand Dardai
Aged about 44 years, Occu. Business,

Both R/o : Sindhi Colony, Gurunanak
Ward, Hinganghat, Tal. Higanghat,
Dist. Wardha [Org. Plaintiff]

....RESPONDENTS

WITH

WRIT PETITION NO. 4546 OF 2024

Municipal Council Higanghat,
Through its Chief Officer,
Tal. Higanghat, Dist. Wardha.
[Org. Defendant]

....PETITIONER

....VERSUS....

Shri Pundlik S/o Dadaji Sathe
Aged about 49 years, Occu. Business,
R/o : Shastri Ward, behind Power House,
Higanghat, Tal. Higanghat, Dist. Wardha.
[Org. Plaintiff]

....RESPONDENT

WITH

WRIT PETITION NO. 4547 OF 2024

Municipal Council Higanghat,
Through its Chief Officer,
Tal. Higanghat, Dist. Wardha.
[Org. Defendant]

....PETITIONER

....VERSUS....

Shri Sunil S/o Namdeo Mudafale,
Aged about 49 years, Occu. Business,
R/o : Near Mohota Garden, Dnyeshwar
Ward, Higanghat, Tal. Higanghat,
Dist. Wardha. [Org. Plaintiff]

....RESPONDENT

WITH

WRIT PETITION NO. 4548 OF 2024

Municipal Council Higanghat,
Through its Chief Officer,
Tal. Higanghat, Dist. Wardha.

[Org. Defendant]

....PETITIONER

....**VERSUS**....

Shri Rajesh S/o Bhaiyalalji Baisware,
Aged about 55 years, Occu. Business,
R/o : Jagannath Ward, behind, Higanghat,
Tal. Higanghat, Dist. Wardha.
[Org. Plaintiff]

....RESPONDENT

Shri M.I. Dhattrak, Advocate for petitioner.
Mrs. S.P. Giratkar (Giripunje) Advocate (appointed) for respondent No.2 in
WP No. 4545/2024 and for respondent No. 1 in remaining petitions.

CORAM : SMT. M.S. JAWALKAR, J.
DATED : 08/01/2025

ORAL JUDGMENT

By joint consent of the parties, matter is taken up for
final hearing at the stage of admission.

2. Heard learned Counsel for the petitioner and learned
Counsel for respondents.

3. The present petitions are filed challenging the order
dated 28/06/2024, passed by the learned District Judge - 2,

Hinganghat, rejecting the applications for condonation of delay challenging the order passed on application Exh. 5 by Civil Judge Junior Division, Hinganghat. Applicants applied for certified copy on 06/12/2023 and received on 27/12/2023.

4. It is submission of the Counsel for applicant before learned Lower Court that applicant appointed Advocate while conducting the suit. The decision on Exhibit No. 5 was not duly communicated to the applicant on time. So also, the Chief Officer of applicant was also having additional administrative charge of other local bodies. There were settlement talks was going on with the plaintiffs/respondents. Therefore, applicant could not approached the Court within limitation to file appeal.

5. The respondent herein opposed the application for condonation of delay for want of proof of sufficient cause. Learned District Judge rejected the application solely on the ground that there are no supporting evidence and grounds for condonation of delay.

6. It is contended by the learned Counsel for the

petitioner that there was notice issued to the respondent for removal of encroachment. The plaintiff, therefore, filed suit bearing R.C.S. No. 182 of 2022, R.C.S. No. 184 of 2022, R.C.S. No. 183 of 2022, R.C.S. No. 178 of 2022 and R.C.S. No. 169 of 2022 respectively. However, there is no challenge to the notice. The plaintiffs also filed application for temporary and permanent injunction. The petitioner herein filed written statement and denied the claim of the plaintiff and submitted that plaintiffs are unauthorized occupants and due to their commercial activities and encroachment, they are causing the obstruction to infrastructure work of construction of cement concrete road. The Civil Judge Junior Division allowed Exhibit No. 5 and passed injunction order. The applicant/petitioner preferred Civil Appeal under Order 43, Rule 1. However, there was delay of 189 days in Writ Petition Nos. 4545/2024, 4549/2024, 4546/2024 and delay of 252 days in Writ Petition Nos. 4547/2024 and 4548/2024. The said application for condonation of delay came to be rejected by learned District Judge-2.

7. In my considered opinion, while rejecting the application for condonation of delay the learned District Judge

failed to take into consideration Section 41 (ha) of the Specific Relief Act, 1963, which reads as under :

***“41. Injunction when refused** – An injunction cannot be granted -*

(a).....

[(ha) if it would impede or delay the progress or completion of any infrastructure project or interfere with the continued provision of relevant facility related thereto or services being the subject matter of such project;]”

It failed to take into consideration that there is construction of road for public purpose and therefore by granting injunction to the plaintiffs who are some of the vendors alleged encroachers halt the total Government Project. It is time and again, this Court as well as Hon'ble Apex Court in many cases held that discretion can be exercised by taking liberal view in appropriate cases without insisting day to day explanation for delay. The challenge in the appeal was temporary injunction order, due to which, public project and construction of cement road was halted and encroachment could not be removed. Considering the public interest, urgency, problem of traffic to the public at large, the learned District Court ought to have condoned the delay.

8. The learned Lower Court erred in rejecting the application, specifically reason put forth are sufficient to condone the delay. It ought to have considered that huge cost for construction is involved in the project and if it is delayed, the authorities may require to pay amount of price escalation, ultimately, it is from the public ex-checker. As such, I am inclined to allow the petitions. Accordingly, I proceed to pass the following order:-

ORDER

1. Writ Petitions are allowed.
2. Order passed by the learned District Judge-2, dated 28/06/2024 below Exh.1 in MJC No. 7 of 2024 in Writ Petition Nos. 4545/2024, MJC No. 8 of 2024 in Writ Petition Nos. 4547/2024, MJC No. 12 of 2024 in Writ Petition Nos. 4549/2024, MJC No. 9 of 2024 in Writ Petition Nos. 4546/2024, MJC No. 6 of 2024 in Writ Petition Nos. 4548/2024, are hereby quashed and set aside.
3. The application below Exhibit No. 1 in MJC No. 7 of 2024 in Writ Petition Nos. 4545/2024, MJC No. 8 of 2024 in Writ Petition Nos. 4547/2024, MJC No. 12 of 2024 in Writ Petition Nos. 4549/2024, MJC No. 9 of 2024 in Writ Petition Nos. 4546/2024,

MJC No. 6 of 2024 in Writ Petition Nos. 4548/2024, are allowed.

4. Delay in filing appeals are hereby condoned.
5. The District Judge, Hinganghat, is hereby directed to register Misc. Civil Appeal along with an application for grant of stay.
6. Parties to appear before the learned District Judge - 2, on 20/01/2025 at 11:00 a.m.
7. It is further directed to the District Judge -2, considering the urgency, to decide the application for stay within a period of 2 weeks thereafter.
8. Copy of this judgment be produced by parties before the Court on 20/01/2025.

(SMT. M.S. JAWALKAR, J.)

Jayashree..