

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

WRIT PETITION NO.1818 OF 2013

Bhaskar Shankar Padghan and another

-vs-

Ratnamalabai Prakash Ingle and another

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Shri V.B.Gawali, counsel for the petitioners.
Shri H.N.Potbhare, counsel for the respondents.

CORAM : SMT. VASANTI A. NAIK, J.

DATE : 24.12.2013.

By this petition, the petitioner impugns an order of the trial Court, dated 03/01/2013 allowing an application for condonation of delay in filing the application under Order IX Rule 9 of the Code of Civil Procedure.

The respondent No.1 had filed a suit against the petitioners for permanent injunction and since the respondent No.1-plaintiff could not remain present when the matter was posted for evidence, the suit was dismissed for want of prosecution. The respondent No.1 filed an application under Order IX Rule 9 of the Code of Civil Procedure for setting aside the order dismissing the suit for want of prosecution. Since there was a delay of about eight months for filing the application, the respondent No.1 filed an application for condonation of delay in filing the application for setting aside the order. The application for condonation of delay was allowed by the impugned order dated 03/01/2013.

On hearing the learned counsel for the petitioners and on a perusal of the impugned order as also the application for condonation of delay, it appears that the trial Court was justified in allowing the application filed by the respondent No.1. The trial Court held that the respondent No.1 had satisfactorily explained the delay in filing the application under Order IX Rule 9 of the Code of Civil Procedure. The Court found that the husband of the respondent No.1 was ill since long and the respondent No.1 was required to take her husband to various hospitals. It was observed by the trial Court that after the husband of the respondent No.1 expired, the respondent No.1 did not file the application for a few months, as the mental condition of the respondent No.1 was not proper. The trial Court held and rightly so, that for deciding the dispute on merits, it was necessary to allow the application in the facts of the case. The order is just and proper and calls for no interference.

Since there is no merit in the writ petition, the same is dismissed with no order as to costs.

JUDGE