

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CIVIL REVISION APPLICATION NO. 139 OF 2015
(Akash Vijaygir Giri and others Vs. Mahendra Vithalrao
Puri and others)

Mr. Shailendra S. Gangakhedkar, Advocate for the
petitioners

CORAM : M.T. JOSHI, J.
DATE : 16/07/2015

ORAL ORDER :

1. Heard learned counsel for the petitioners.
2. Aggrieved by the order dated 23rd June, 2015, passed by the learned Civil Judge Senior Division, Nanded, below Exhibit-1 in Misc. R.J.E. No. 39/2008, thereby condoning the delay of 101 days in filing the application for setting aside the decree, which, according to the applicant therein, was passed exparte and further refusing to go into the merit of the maintainability of the application for setting aside exparte decree, the present civil revision application is preferred.
3. Upon hearing learned counsel for the

petitioners, in my view, the learned Civil Judge Senior Division has given cogent reason for condonation of delay. The condonation of delay depends on the facts and circumstances of each case. No material illegality is found to have been committed by the learned trial court while passing the impugned order.

4. As regards the issue of maintainability, the learned Civil Judge Senior Division has initially observed that the application being only for condonation of delay, at that juncture, there was no need to go into the merit of the case and to see the maintainability of the application for setting aside the exparte decree. Thereafter, however, the learned Civil Judge Senior Division has made certain observation on the maintainability of the application. In the circumstances, though I agree with the learned counsel for the petitioners that once the learned Civil Judge Senior Division has held that at that juncture, there was no need to go into the merit of the case, lateron, certain observations regarding the maintainability were unwarranted, however, ultimately, as the learned Civil Judge Senior Division has not passed any order on merit

regarding the maintainability of the application for setting aside the exparte decree, no material illegality is committed by the learned Civil Judge Senior division. In the result, the following order :-

5. The civil revision application is dismissed. The learned Civil Judge Senior Division, Nanded shall, however, decide the issue of maintainability of the application for setting aside exparte decree, without being influenced by his own observation made in the impugned order.

[M.T. JOSHI]
JUDGE

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