

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

CIVIL REVISION APPLICATION NO.106/2014

Shyamrao s/o Pandurang Wagh
...Versus...
Smt. Kamlabai Pandurang Kamble and others

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri M.R. Joharapurkar, Advocate for applicant

CORAM : Z.A. HAQ, J.
DATE : 24.02.2015

Heard the learned Advocate for the applicant.

This civil revision application is filed by the original plaintiff challenging the order passed by the trial Court condoning the delay of 146 days in filing the application for setting aside the *ex parte* judgment and decree.

The submission made on behalf of the applicant is that the reason given by the non-applicants in the application filed for setting aside the *ex parte* decree and for condonation of delay is not sufficient to condone the delay. It is submitted that the application filed by the non-applicants for setting aside the *ex parte* judgment and decree is not maintainable. It is further submitted that the trial Court, while condoning the delay, has not considered the statements of the witnesses in the cross-examination and the non-consideration of the relevant evidence has resulted into erroneous order. It is submitted that

the delay is not of 146 days and the delay has to be calculated from the date when the order was passed by the trial Court to proceed without written statement of the non-applicants.

I have examined the impugned order. So far as the submission made on behalf of the applicant regarding the maintainability of the application filed by the non-applicants for setting aside the *ex parte* judgment and decree is concerned, the challenge as raised is premature. The application is pending before the trial Court for adjudication and therefore, the submissions made on behalf of the applicant in this regards cannot be considered at this stage. The learned trial Judge has considered the material on the record and has given the findings based on the material on the record. Even the evidence of the parties is considered by the learned trial Judge in paragraph no.11 of the impugned order. The impugned order does not suffer from any irregularity or illegality and it cannot be said that the learned trial Judge has transgressed the limits of his jurisdiction.

I see no reason to interfere with the impugned order. The civil revision application is dismissed.

JUDGE

Wadkar