

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

WRIT PETITION NO.4351 OF 2014

Natthuji S/o Vinayak Girhe & Anr.

-vs-

Manohar Bhagwan Tidke

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

Court's or Judge's Orders.

Shri N. B. Bargat, Advocate for petitioners.

Shri S. A. Dutonde, Advocate for respondent.

CORAM : A.S.CHANDURKAR, J.

DATE : JULY 10, 2015

By this petition, the petitioner has challenged the order dated 05/07/2014 passed by the trial Court rejecting the application moved by the present petitioner for restoration of the proceedings that had been filed for setting aside an *ex-parte* decree passed against the petitioner.

Spl.C.S. No.198/2006 filed by the respondent was decreed on 29/06/2007. By said decree, the plaintiff was directed to deposit balance consideration and the defendants were directed to execute a sale-deed. In the civil suit, the defendants were treated *ex-parte* and hence on 03/10/2007, an application for setting aside the *ex-parte* order came to be filed. This application was dismissed for want of prosecution on 18/08/2009. Thereafter proceedings under Section-151 of the Code of Civil Procedure were filed for condoning delay in seeking restoration of the earlier proceedings. The trial

Court by the impugned order has rejected the said application.

Shri N. B. Bargat, learned counsel for the petitioners submitted that on account of absence of the petitioners' counsel, they were treated *ex-parte* before the trial Court. He submitted that the petitioners were not aware about passing of the *ex-parte* decree and only when they received a caveat that they got knowledge about the same. He further submitted that even in the proceedings for setting aside the *ex-parte* decree, the counsel had never informed the petitioners about their presence and hence those proceedings were also dismissed. Learned counsel referred to paragraph 7 of the application to indicate the reason for delay. He placed reliance on the judgment in ***Sonabai Kerappa Katkar & Ors. Vs. Mohamad Jilani Mohmad Wahid Shaikh & Ors. 2008(6) ALL MR 323*** and urged that adjudication on merits was necessary.

Shri S. A. Dutonde, learned counsel for respondent opposed aforesaid submissions. According to him, the petitioners were not at all diligent in prosecuting the proceedings. He referred to the proceedings that were initiated for restoration and the various dates on which the present petitioners had remained absent. He submitted that no justifiable reasons for condoning the delay and seeking restoration had been assigned. Though the decree was passed in the year 2007, the respondent was deprived of the fruits of said decree though an amount of Rs.1 lakh had been deposited. He

placed reliance on the judgment of learned Single Judge in *Varhyan N. Singh (since deceased thr. Lrs. Surjeet Singh s/o Narendra Singh & Ors. Vs. Kala wd/o Narendra Singh & Ors. 2014(2) Mh. L.J. 61* to urge that the petitioners were not entitled for any relief.

The consideration of the material on record indicates that the suit was decreed *ex-parte* on 29/06/2007. The proceedings for setting aside the *ex-parte* decree were filed on 11/10/2007, but it has been observed by the trial Court that on 20/04/2009, 24/06/2009 and 17/07/2009, the petitioners and their counsel were absent. The case was then adjourned to 18/08/2009 by directing the petitioners to remain present. The petitioners again remained absent on said date. Hence, the proceedings were dismissed on 18/08/2009. The application for restoration dated 30/09/2009 was filed on 27/01/2012 as stated in the impugned order. It is merely mentioned in paragraph 7 that the applicants came to know for the first time about the impugned order when they engaged new counsel on 15/09/2009. Besides this explanation, there is no explanation furnished by the petitioners for the reasons resulting in dismissal of the application on 18/08/2009. or the reasons for delay thereafter.

Considering the records of the case and the observations of the trial Court in paragraphs 8 and 9 of the impugned order, it cannot be said that the trial Court has committed any jurisdictional error in rejecting the application for restoration. Decision relied upon in the

case of *Sonabai Katkar* (supra) holds that despite various steps taken by the parties therein, their counsel had been found negligent. The steps taken by the parties therein have been specifically referred to in paragraph 4 of the judgment. In the present case, there has been absence of diligence on the part of the petitioner which has not been duly explained. A mere statement that their counsel was negligent by itself is not sufficient to accept the case of the petitioners.

As observed in *Varhyan* (supra), if a party has been negligent in prosecuting his case then in absence of any satisfactory explanation, the delay does not deserve to be condoned. Hence in view of aforesaid, there is no reason to interfere with the impugned order. The petition is therefore dismissed with no order as to costs.

JUDGE