

IN THE HIGH COURT OF JUDICATURE AT BOMBAY:
NAGPUR BENCH : NAGPUR
Civil Application [CAO] No. 1822 of 2016
IN
Misc. Civil Application [Resto.] St. No. 20235 of 2015
IN
Writ Petition No. 2435 of 2003 [decided]
[Eshwar Vitthal Narnaware Vs. Union of India & five others]

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

Court's or Judge's orders

Mr. N.R. Pathrabe, Adv., for petitioner.
Mr. Gosavi, Adv., for respondent nos. 4 and 5.

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**CORAM : B. R. GAVAI AND
V.M. DESHPANDE, JJ.**

DATE : 15th November, 2016

This is an application for condonation of delay in filing an application for restoration of the Writ Petition which came to be dismissed in default.

The application is vehemently opposed by the learned counsel for respondent nos. 4 and 5 on the ground that there was a delay of almost nine years in filing application for restoration.

Heard.

Perusal of the application would reveal that though the petition was dismissed on 20th July, 2007, the counsel, who was appearing in the matter, was not aware about the same. It can be seen that on 11th January, 2016 an application was also filed by the said counsel for grant of early hearing. Subsequently, when the petitioner went to the said counsel to enquire about the matter, he did not get proper information and, therefore, he engaged another counsel, who disclosed the fact of dismissal of the Writ Petition.

By now, it is a settled principle of law that on account of a mistake on the part of a counsel, a litigant should not suffer. No doubt, that the earlier counsel ought to have been more diligent in the matter. However, on account of his negligence, the litigant cannot be penalized and deprived of hearing of the matter on merits. In that view of the matter, the application is allowed. Delay is condoned.

M.C.A. St. No.20235/16 :

Heard.

For the reasons stated in the application, the application is allowed. Writ Petition is restored to its file.

Put up for final hearing on 28th November, 2016
at Sr. No.1.

Learned counsel for the petitioner to supply
copies of the petition to the Court as well as to the
respondents.

Judge

Judge

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