

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.982 OF 2015

Rakesh s/o Umakant Wani,
Age-32 years, Occu-Agril. and Service,
R/o Gandhi Chowk, Pimprala,
Tq. and Dist. Jalgaon

-- PETITIONER

VERSUS

1. Pravin s/o Rajmal Kabre,
Age-47 years, Occu-Business,

2. Varsha w/o Pravin Kabre,
Age-40 years, Occu-Household,
Both R/o 20, M.I.G. Colony,
Opp.Nehru Stadium, Harda,
Tq. and Dist. Harda (M.P.)

-- RESPONDENTS

Mr.S.J.Salunke, Advocate for the petitioner.

Mrs.Sangmitra Wadmare. Advocate for respondent Nos. 1 and 2.

(CORAM : Ravindra V.Ghuge, J.)

DATE : 11/07/2018

ORAL JUDGMENT :

1. Rule . Rule made returnable forthwith and heard finally by the consent of the parties.

2. On 10/02/2015, while issuing notice to the respondents, I had passed the following order :-

“1. Issue notice before admission to the respondents, returnable

on 24-03-2015.

2. The petitioner was the plaintiff in R.C.S. No.206 of 2003. His lawyer filed no instruction purshis on 17-03-2008. The Trial Court issued fresh notice dated 14-07-2008 which is said to have been served on the real uncle of the petitioner on 15-07-2008 who resides along with the petitioner in the same town where the Court is situated. Contention is that the real uncle did not appraise the petitioner of the pending proceedings. The suit was dismissed in default on 15-11-2008.

3. The petitioner filed an application for restoration along with an application for condonation of delay on 11-10-2011 which is practically after three years of the DID order. C.M.A. No.375 of 2011 was rejected by the impugned order dated 12-11-2014. Since delay was not condoned, the restoration application was not heard.

4. In the light of the above, the petitioner shall deposit an amount of Rs.20,000/- (Rs. Twenty thousand only) on or before the 13th day of March 2015, pending admission hearing of this petition."

3. The petitioner has therefore deposited Rs.20,000/- in this Court on 20/02/2015 and the interim protection was continued.

4. Learned Advocate for the respondents strenuously submits

that the learned Advocate for the petitioner/plaintiff had withdrawn his *vakalatnama* on 17/03/2018 in Spl.Civil Suit.No.206/2003. Thereafter, the Trial Court issued a fresh notice on 14/07/2008. Said Service was served upon the uncle (plaintiff's father's brother) and therefore the service was complete. Yet the plaintiff did not appear and therefore the Trial Court dismissed the suit in default on 15/11/2008. It was only on 11/10/2011 that the plaintiff appeared by filing MA No.375/2011 praying for condonation of delay alongwith an application for restoration of the suit. Considering the pleadings in the application and the conduct of the plaintiff, the Trial Court has rightly rejected the said application by the impugned order dated 12/11/2014. The delay is of 2 years and 11 months and therefore the same cannot be condoned.

5. I find that the law on condonation of delay has been crystalized by the Hon'ble Apex Court in the Matter of Collector, Land Acquisition Anantnag and another Vs. Mst. Katiji and others [(1987) 2 SCC 107] and Esha Bhattacharjee Vs.Managing Committee of Raghunathpur Nafar Academy and others [2013(12) SCC 649]. If oblique or ulterior motives or laches are not attributable to the conduct of the applicant and if the applicant would suffer an irreparable harm by refusing to condone the delay, the Court has to

take a pragmatic view rather than adopting a pedantic approach.

6. The suit property is an immovable property. The counter suit RCS No.33/2003, filed by the defendants with regard to the same suit property, has also been dismissed. The delay of 2 years and 11 months may appear to be a bit large, but would not amount to an inordinate delay which cannot be condoned. The petitioner does not appear to have caused the delay deliberately since he would in fact jeopardize his own case by unnecessarily and deliberately causing a delay.

7. Considering the above, this petition is partly allowed. The impugned order dated 12/11/2014 is quashed and set aside. Misc.Appl.No.375/2011 is allowed and the delay of 2 years and 11 months is condoned.

8. At this juncture, learned Advocate for the respondents/ defendants submits that a substantial portion of the costs be granted to the defendants and a small portion of the costs be donated to a public cause for the treatment of patients, who are below poverty line. As such, both the respondents are permitted to withdraw Rs.7,500/- each (Rs.Seven thousand five hundred only) from this

Court as costs. The remaining Rs.5,000/- (Rs.Five thousand only), alongwith accrued interest, shall be transferred to the Government Medical College and Hospital, Aurangabad, **through Medical Officer, High Court Dispensary, Aurangabad**, either in cash or by Demand Draft (Demand Draft be drawn in the name of “**Dean, Government Medical College and Hospital, Aurangabad CSR Fund**”).

9. It is made clear that this Court has not expressed any view as regards the application for restoration which will now be registered by the Trial Court and would be decided on its own merits.

10. Rule is made partly absolute in the above terms.

(Ravindra V.Ghuge, J.)