

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

914 WRIT PETITION NO. 2911 OF 2018

Vaijnath S/o Irayappaswami
and another

... Petitioners.

Versus

Venkat S/o Bapurao Dhumale

... Respondents.

....

Mr. Dnyaneshwar B. Pokale, Advocate for the Petitioners.

....

CORAM : V.L. ACHLIYA, J.

DATED : 11th APRIL, 2018

PER COURT:-

1. By this petition under Article 227 of the Constitution of India, the petitioners have challenged the order dated 03.08.2017 passed in Miscellaneous Civil Application No.06/2017 by Civil Judge, Senior Division, Biloli, Dist. Nanded. By the impugned order, the learned Judge of the trial Court has rejected the application filed by the petitioner seeking condonation of 3 years 1 month and 27 days delay in filing application to set aside the order of dismissal of suit.
2. Heard the learned counsel for the petitioner. Perused the order dated 03.08.2017 as well as the order dismissing the suit filed by the petitioners-plaintiff.
3. Perusal of the record reveals that the petitioners had filed Civil Suit for declaration and injunction as well as cancellation of sale deed. The suit was filed in the year 2013 in respect of service of suit summons. The defendants failed to appear hence the Court pass the order and proceed *ex parte* against the respondent. The case was

listed for evidence of plaintiffs on 04.10.2013. Plaintiffs failed to appear on the said date. Thereafter, the case was listed before the Lok Adalat on 28.11.2013. As the case was not settled before the Lok Adalat, the case was again listed before the regular Court. On 28.11.2013, the suit came to be dismissed in default of plaintiff to appear and prosecute the suit. After the period of more than 3 years, the petitioners-plaintiffs have filed the application to set aside the order dismissing the suit in default of plaintiffs along with the application for condonation of delay. The application was heard and decided vide order dated 03.08.2017. The trial Court has passed the reasoned order. It is observed that the medical certificate tendered in support of the case of the petitioner is found to be suspicious. The trial Court has directed the Civil Surgeon, Nanded to conduct the enquiry and take appropriate action against the person who has issued the certificate.

4. On due consideration of the submissions advanced in the light of the order passed by the trial Court, I am of the view that no case is made out to interfere with the order in exercise of writ jurisdiction under Article 227 of the Constitution of India. There is no perversity in the order passed by the trial Court. While dealing with the petitioner under Article 227 of the Constitution of India, this Court cannot sit in Court of Appeal over the order passed by the trial Court. In absence of perversity or illegality in the order, I am not inclined to entertain the petition. The petition is dismissed.

(V.L. ACHLIYA)
JUDGE