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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 13402 OF 2016**

Chhagan S. Bharane and ors ... Petitioners.
V/s.
Hirabai Navnath Pawar and ors ... Respondents

Mr. Rupesh A. Zade, for petitioners
Mr. Rahul S. Kadam, for respondent

CORAM : DR. SHALINI PHANSALKAR-JOSHI, J.

DATE : 26th APRIL, 2018.

P.C. :

1] Heard learned counsel for the petitioners and learned counsel for the respondent.

2] By this petition filed under Article 227 of the Constitution of India, the petitioners are challenging the order dated 2nd August, 2016, passed by the 2nd Joint Civil Judge Junior Division, Indapur, below Exh.1 in Misc. Application No.3 of 2013 which was preferred by the present petitioner to condone delay of 12 months in filing Application for restoration of R.C.S.No.206 of 2002, which was dismissed for default on 22nd December, 2011.

3] The said suit was filed by the petitioners for specific performance of the contract in the year 2002. After several dates, it came to be fixed on 22.12.2011, for recording evidence of the

petitioners. However, on that day according to petitioner No.1, he was ill due to cold and fever; whereas the petitioner Nos. 2 and 3 were out of station for religious programme. Their advocate was also unable to attend the Court, on account of his personal difficulties. As a result. the suit came to be dismissed for non appearance of the petitioners on 20.12.2011.

4] It is submitted by the petitioners that within 30 days therefrom, application for restoration of the suit should have been filed. However, according to learned counsel for the petitioners, the petitioners being illiterate and simpleton persons, there was delay in filing this application which needs to be condoned and should have been condoned by the trial Court.

5] Respondent has resisted the said application on the ground that reason given for absence is not correct and proper.

6] In support of his case, the petitioner has examined himself. However, in cross examination he has admitted that on 22.12.2012, he was working as Chit Boy in Chhatrapati Sugar Factory and he was on duty there on that day. The trial Court, has further noticed that as per the medical certificate, which he has produced on record at Exh.15, the petitioner was ill due to “diarrhoea” and therefore, definitely not from cold and fever, as stated in the application. Thus, the trial Court found that the reasons given

by the petitioner No.1 for his absence on that particular day and for delay of 12 months in filing the application, were not sufficient. They were also not true and genuine as they were found to be falsified.

7] In view thereof, in the backdrop of this evidence and the facts, when the trial Court has rejected the petitioner's application for condonation of delay, this Court should not interfere in the discretion exercised by the trial Court, which was based on the evidence adduced before it.

8] Though, normally it is true that this Court should adopt liberal approach while condoning the delay, however, in the present case, having regard to the fact that the petitioner has not given truthful reason, but the reason given is found to be falsified by the trial Court and after considering that the suit is of the year 2002, apparently there was delay of 12 months which the petitioners failed to explain, this is not a case where this Court should adopt liberal approach and interfere in the discretion exercised by the trial Court.

9] The Writ Petition, therefore, stands dismissed.

10] The petitioners are at liberty to withdraw an amount of Rs.10,000/- which is deposited by the petitioners in this Court, as per order passed by this Court at the time of issuing notices to the respondent.

[DR.SHALINI PHANSALKAR-JOSHI, J.]