

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

WRIT PETITION NO.3500 OF 2018

VILAS NARHAR DESHPANDE
VERSUS
RAMABAI GOKULDAS WANI AND ANOTHER

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Advocate for Petitioners : Mr. Goyanka M.K.
Advocate for Respondents 1,2 : Mr. Patil Atmaram J.

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CORAM : V.K. JADHAV, J.
Dated : December 11, 2019

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PER COURT :-

1. Heard finally with consent at admission stage.

2. The petitioner is the original defendant-tenant in Regular Civil Suit No.224 of 1994 instituted for recovery of arrears of rent and for eviction by the respondents/plaintiffs. The learned 2nd Jt Civil Judge J.D., Jalgaon by judgment and decree dated 29.6.2013 partly decreed the suit with costs and directed the petitioner-defendant to pay Rs.3,300/- to the plaintiff as arrears of rent and further directed him to hand over the vacant possession of the tenanted premises i.e. two rooms on the second floor of municipal house no.384 on
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city survey no.2112/46A/1 situated within the local jurisdiction of Jalgaon Municipality (now, municipal corporation) to the plaintiff within two months from the passing of the decree in the suit. Though, the petitioner-defendant has filed his written statement at exh.18, however, failed to file the additional written statement in respect of the amendment carried out by the respondents/plaintiffs. Further, the petitioner-defendant has failed to challenge the evidence lead by the respondents/plaintiffs and the Trial Court has almost decreed the suit ex-parte. The petitioner/original defendant has, therefore, filed an application under Order 9 Rule 13 of the Civil Procedure Code for setting aside the ex-parte judgment and decree passed in aforesaid RCS No.224 of 1994 which has been delayed for one year, six months and twenty two days. Petitioner-defendant has, therefore, filed a separate application bearing Mis. Civil Application No.83 of 2015 for condonation of the said delay. The learned Jt. Civil Judge J.D. Jalgaon by impugned order below Exh.1 in M.C.Appln No.83 of 2015 has rejected the said

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application. Hence, this writ petition.

3. Learned counsel for the petitioner/original defendant submits that the petitioner has well explained the delay caused in filing the application for setting aside the ex-parte decree. Petitioner was suffering from heart disease. He had also undergone angioplasty. Learned counsel submits that the said ex-parte judgment and decree came to be passed on 29.6.2013 in R.C.S. No.224 of 1994. On 20.2.2015 an application under Order 9 Rule 13 of the Civil Procedure Code came to be filed alongwith separate application seeking condonation of delay as aforesaid. Petitioner had undergone angioplasty on 5.3.2012 and he was admitted for almost five days in the hospital. Thereafter, he was advised bed rest. He was also suffering from some other diseases. Thereafter, his son met with accident and he was admitted on 7.3.2014 and discharged from the hospital on 24.3.2014. Learned counsel submits that due to all these reasons petitioner was prevented to approach his counsel and also to attend the Court

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dates. Learned counsel submits that the petitioner has examined three doctors. Petitioner has not only examined himself on oath but also to substantiate his contentions, he has examined three doctors and accordingly certificates issued by those doctors advising him bed rest came to be proved marked as exhibit nos. 17, 21 and 23 respectively. Learned counsel submits that Trial Court has taken into account general admissions given by those doctors in their cross-examination and held that the petitioner was able to walk from first floor to third floor and he was also able to walk for one kilometer to attend the Court. According to the learned Judge of the Trial Court, Court premises was near to the suit premises i.e. half kilometer away from the suit premises. Learned counsel submits that the petitioner has well explained the delay and the Trial Court by condoning the same should have considered his application filed for setting aside the ex-parte judgment and decree on its own merits.

4. Learned counsel for respondents/original plaintiffs has strongly resisted the writ petition on the ground that though suit for eviction and arrears of rent was instituted way back in the year 1994, because of the delayed tactics of the petitioner herein the suit could be disposed off in the year 2013. Learned counsel submits that petitioner has failed to explain the delay satisfactorily. Delay is inordinate one. Even during the said period, petitioner was pursuing his other litigation in the various courts including the High Court. He was not bed ridden and he was merely advised to take bed rest and even the doctors examined by him and his witness also admitted the same in the cross examination. Learned counsel submits that no case is made out to condone the delay. Learned Judge of the Trial Court has rightly rejected the application bearing M.C. Appln No.83 of 2015. There is no substance in this writ petition. Writ Petition is liable to be dismissed.

5. I have carefully gone through the contents of the application bearing M.C.Appln No.83 of 2015

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seeking condonation of delay of one year six months and twenty two days caused in filing the application under Order 9 Rule 13 for setting aside the ex-parte judgment and decree. I have also considered the say filed by the respondents and also gone through the evidence lead by the petitioner to substantiate his contentions raised in M.C.Appln No.83 of 2015 filed for seeking condonation of delay. I have also gone through the medical certificates exh.17, 21 and 23 duly proved through the witnesses i.e. three doctors. On perusal of the certificate exh.17 issued by Dr. Sureshchandrasingh Gulabsingh Suryawanshi witness no.2. It appears that the petitioner was not only suffering from heart ailment, but also suffering from Renal Colic as well Irritable Bowel Syndrome with acid peptic disease. Dr. Suryawanshi has advised the petitioner to take bed rest from the period 5.6.2013 to 10.12.2013 with Medical regular treatment. Witness Dr. Suryawanshi has admitted in his cross-examination that a person suffering from the disease like the petitioner can walk from 25 to 150 feet. Even he has admitted that the patient like the petitioner

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can go to the hospital if it is situated at a distance of one kilometer. After going through the said cross-examination, it appears that those are the general admissions given by the said doctor. It is not clear that under what circumstance the patient suffering from the said disease as mentioned can take a walk, however, taking a normal walk in the morning is one thing than to attend the Court dates is another thing for the patients suffering from heart disease in stress-full circumstance. Apart from this Exh.21 and 23 are also on the same line. Thus, considering the entire aspect of the case, I am satisfied that the petitioner was prevented from sufficient cause to prefer an application under Order 9 Rule 13 of the Civil Procedure Code for setting aside the ex-parte judgment and decree and as such delay has been caused. Trial Court ought to have at least condoned the delay. Needless to say that it is for the Trial Court to decide the application under Order 9 Rule 13 of the Civil Procedure Code on its own merits, however, the petitioner has made out a case for condonation of delay. Hence, following order.

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O R D E R

1. Writ Petition is hereby allowed to that extent only.
2. The impugned order passed below Exh.1 dated 20.02.2018 in Misc. Civil Application No.83 of 2015 is hereby quashed and set aside.
3. Misc. Civil Application No.83 of 2015 to the extent of seeking condonation of delay of 1 year 6 months 22 days caused in filing an application under Order 9 Rule 13 of the Civil Procedure Code for setting aside the ex-parte judgment and decree passed in R.C.S. No.224 of 1994 is hereby allowed as per the prayer made in the said application to the extent of condonation of delay only.
4. Writ Petition accordingly disposed off.

(V.K. JADHAV, J.)

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