

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**BENCH AT AURANGABAD****WRIT PETITION NO.656 OF 2014**

Deelip S/o Gorakh Patil,
 Age : 45 Years, Occ. Agriculture
 R/o. Village Aslod Tq. Shahada
 Dist. Nandurbar

..PETITIONER

VERSUS

Lalchand S/o Bhavarlal Jain,
 Age : 56 Years, Occ. Business,
 R/o. Opp. Shahada Tahsil Office,
 Main Road, Shahada Tq. Shahada
 Dist. Nandurbar

..RESPONDENT

...
 Advocate for Petitioner : Mr. C.R. Deshpande And Mr. V.P. Raje
 Advocate for Respondent : Mr. S. U. Chaudhari

...
CORAM :T.V. NALAWADE. J.
DATE : 11th FEBRUARUY, 2019.

PER COURT :-

Petition is filed to challenge the decision of the learned District Judge-1, Shahada, District, Nandurbar given in Misc. Civil Appeal No. 17 of 2008 dated 20.07.2013 and order passed below Exh. No. 8 in Misc. Application No. 17 of 2004 passed by the learned Civil Judge, Junior Division, Shahada, dated 06.10.2008

2. Both the sides are heard.

3. Regular Civil Suit No. 23 of 2001 was filed by the present respondent for recovery of amount, which was in respect of purchases made by the petitioner on credit basis. After receipt of the suit summons the present petitioner had appeared in the matter and he had appointed

counsel, but he failed to file his written statement. His Counsel filed a Pursis (Exh.19) that was withdrawn on 28.02.2002 and then decree came to be passed on 23.04.2002. The application for condonation of delay caused in filing application under provision of Order IX Rule 13 of the Code of Civil Procedure came to be filed on 06.11.2004 i.e. after about two years and 6 months from the date of decree.

4. It is contention of the petitioner that he had no knowledge about the decision of the suit and only when he received the notice of execution proceeding on 09.07.2004, he approached counsel and took steps for filing proceeding for setting-aside ex-parte decree.

5. The application filed for delay condonation was rejected by the learned Civil Judge, Junior Division, Shahada and the said order came to be challenged in the District Court, Shahada, even when the said order could not have been treated as one under Order IX Rule 13 of the Code of Civil Procedure. Even if that circumstance is ignored and it is presumed that the original matter is before this Court for challenging the order made on delay condonation application by the learned Civil Judge, Junior Division, the Court is expected to ascertain as to whether sufficient cause was shown and as to whether there is some case on merit to the petitioner in the main matter.

6. The petitioner took stand in application filed for condonation of delay that his uncle was suffering from the cancer since the year 2000 and as the son of the uncle had shifted to U.S.A, there was nobody to look after the uncle and he was busy in taking care of the uncle and due to that, he did not turn up to the Court. This contention is not at all acceptable. The cross-examination of the present petitioner, which is mentioned by the learned Civil Judge, Junior Division, in the order shows that the written statement was also not filed and even after repeated attempts made by the counsel to keep the petitioner present in the Court for doing needful, he did not turn up. He did not examine the said uncle before the Court of the learned Civil Judge, Junior Division. In any case, it is the contention that he remained busy all the while for taking care of his uncle during the period of more than two years does not appear to be probable in nature and on that ground, the learned Civil Judge, Junior Division, has held that no sufficient cause is shown. Even, no written statement was filed in the suit, which was filed for the recovery of money in the year 2001. We are in the year 2019. Though, to show the bonafide, the amount of Rs 20,000/- (Rupees twenty thousand) is deposited by the petitioner in the Court, this Court holds that it was an attempt of the present petitioner to protract the things, but he failed, as decree is given against him. In addition to that, there are aforesaid circumstances. This Court sees no reasons to make interference in the order passed by the learned Civil Judge, Junior

Division. The petition stands dismissed. The amount deposited by the petitioner be given to the respondent-decree holder.

7. Civil Application, if any, is also disposed of.

[T.V. NALAWADE]
JUDGE

YSK/