

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CIVIL APPLICATION (C) NO. 09 OF 2019
IN
CIVIL REVISION APPLICATION (St.) NO.1666 OF 2019

Asha w/o Shekhar Pawar

vs.

Dayanand s/o Rambhauji Motghare

Office Notes, Office Memorandum of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri. B. M. Rokde, counsel for applicant.

CORAM : MANISH PITALE J

DATED : 06/12/2019

CIVIL APPLICATION (C) NO. 09 OF 2019

This is an application for condonation of delay of 468 days in filing the accompanying revision application. Notice was issued on this application by order dated 05/03/2019. Thereafter, the sole respondent was served and he entered appearance through counsel, but none has appeared on behalf of the respondent on two previous dates and even today when the application is called out for hearing. Hence, for the reasons stated in the application, the same is allowed and delay is condoned.

CIVIL REVISION APPLICATION (St.) NO.1666 OF 2019

By this revision application, the applicant (original defendant) has challenged order dated 14/07/2017, passed by the Court of 10th Joint Civil Judge, Senior Division,

Nagpur, whereby applicant at Exh.26 has been rejected. The said application was filed by the applicant herein seeking an issue to be framed regarding jurisdiction of the Court below.

2. The two grounds on which the applicant questioned the jurisdiction of the Court below were firstly, that the society in whose layout the suit plot was located was a necessary party in the suit and secondly, that only the Cooperative Court would have jurisdiction to entertain the suit.

3. The Court below has found that since it was concerned with the question of grant or refusal of a decree of specific performance claimed by the respondent (original plaintiff) and the question required to be decided was regarding the existence of the agreement and readiness and willingness on the part of the respondent, there was no question of Cooperative Court having jurisdiction or that the society being a necessary party. In this context the Court below came to a conclusion that the issue sought to be framed on behalf of the applicant through the application did not require consideration and the application was rejected.

4. Considering the nature of suit filed by the respondent herein, it is admittedly for specific performance of an agreement said to have been executed on 01/02/2013 between the parties. Therefore, no error can be attributed to the Court below in holding that it had jurisdiction in the matter. The contention raised on behalf of the applicant that

only the Co-operative Court would have jurisdiction is wholly misplaced, looking to the nature of the suit filed before the Court below. For the same reason the insistence that the Society concerned was a necessary party, cannot be accepted.

5. Hence, it is found that there is no substance in the present revision application. Accordingly, it is dismissed.

JUDGE