

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

WRIT PETITION NO. 3156/2017

Panjabrao R. Ankhule & ors.

..VS..

Anusayabai B. Khandare & ors.

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

Court's or Judge's orders

Shri V.N. Patre, Advocate for the petitioner(s)
Shri C.A. Joshi, Advocate for the respondents

CORAM : Z.A.HAQ, J.
DATED : 14/06/2019

The civil suit filed by the respondents – plaintiffs in 1999 praying for decree for partition and separate possession was dismissed in default in 2001. The plaintiffs had applied for restoration of the civil suit and the civil suit was restored. The civil suit was then transferred to the Court of Civil Judge, Senior Division, Pusad and later on, it was transferred to the Court at Mahgaon and re-numbered as Civil Suit No. 07/2012. The plaintiffs failed to attend the proceedings, and therefore again the civil suit was dismissed. Again, the plaintiffs applied for restoration of the civil suit. As there was delay in filing the restoration application, the plaintiffs had filed the application praying for condonation of delay. The trial Court refused to condone the delay and consequently, rejected the application filed by the plaintiffs praying for restoration of the civil suit. The plaintiffs had filed appeal before the District Court under Order 43 Rule 1 (c) of the Code of Civil Procedure which is allowed by the impugned judgment.

The contention of the petitioners – defendants is that the plaintiffs had not been vigilant in prosecuting the matter and the explanation given by the plaintiffs for seeking restoration of the civil suit is not sufficient to condone the delay.

After going through the impugned order, I find that the learned District Judge has considered all the relevant aspects and has exercised discretion judiciously and has taken pragmatic view of the matter. It is informed that another civil suit filed by one of the member of the family praying for decree for partition and separate possession of the same property is also going on. In these facts, it cannot be said that the impugned judgment would result in any hardship or prejudice to the petitioners – defendants. Hence, I see no reason to interfere with the impugned judgment.

The writ petition is **dismissed** with costs quantified at Rs. 5,000/- to be paid by the petitioners to the respondents.

The receipt showing payment of costs shall be produced on record of this petition within one month.

JUDGE

Ansari