

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

**Writ Petition No.3231 of 2014**  
**Virendra Lalwani Vs. Indian Cancer Society**

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

Mr. R.M. Bhangde, Advocate for petitioner  
Mr.S.P. Dharmadhikari, Sr. Advocate & Mr.R.K. Joshi, Advocate for  
respondent

**CORAM : MANISH PITALE, J.**

**DATED : NOVEMBER 25, 2019**

By this writ petition, the petitioner has challenged order dated 29/10/2013, passed by the Court of Civil Judge (Junior Division), Nagpur (Trial Court), whereby application for condonation of delay in filing written statement has been allowed and an order dated 25/04/2011, directing the suit to proceed without written statement has been set aside and written statement of the respondent (original defendant), has been directed to be accepted on record subject to costs of Rs.2,000/- payable by the respondent to the petitioner herein.

2. The petitioner filed a suit for specific performance before the Trial Court on 10/09/2009, wherein the respondent entered appearance on 09/11/2009. The period of 90 days for filing written statement expired on 09/02/2010. On 16/08/2012,

the respondent filed the application for condonation of delay in placing the written statement on record. The said application stood allowed by the impugned order.

3. Mr. R.M. Bhangde, the learned counsel appearing for the petitioner submitted that the Court below erred in passing the impugned order because, firstly, the reasons stated in the application for condonation of delay to explain the delay were false and on this count alone, the application ought to have thrown out as per the settled position of law. Secondly, it was contended that the reasons stated in the application did not make out a case for sufficiency in explaining the delay because the respondent Society had entered appearance before the Trial Court through its Secretary, who had even filed reply to the application for temporary injunction and now it was being claimed by the respondent that the written statement could not be filed in time because its Administrative Officer, one Mr. Pillai, was in charge of the case and since he was on leave periodically, the delay has occurred. It was submitted that the reasons stated in the application were casual in nature, which the Court below failed to appreciate while passing the impugned order.

4. On the other hand, Mr. S.P. Dharmadhikari, the learned senior counsel appearing for the respondent submitted that a perusal of the claim

petition, particularly, paragraph No.5 thereof would demonstrate that even according to the petitioner, he was in touch with the said Mr. Pillai, with regard to the execution of sale deed in pursuance of the agreement in question, thereby demonstrating that the said Mr. Pillai was very much concerned with the action to be taken on the part of the respondent in respect of said agreement. Thereafter, attention of this Court was invited to the statement made in the application for condonation of delay, wherein it was specifically stated that since the year 2007, periodically the said Mr. Piallai was on leave and considering the fact that he had not reported to the office of the respondent for some time prior to filing of the application for condonation of delay, it was apprehended that he might not report at all, as a result of which delay had occurred in filing the written statement. It was further submitted that the reply to the application for temporary injunction was admittedly filed on behalf of the respondent Society within the period of 90 days for filing written statement, demonstrating that the respondent could not be blamed for deliberate delay in proceeding before the Trial Court. It was further submitted that the writ petition, stated to be writ petition under Article 226 of the Constitution of India, was clearly not maintainable as a judicial order was being challenged, in view of the said position of law, reiterated in the judgment of the Hon'ble Supreme Court in the case of **Radhey Shyam and another Vs.**

**Jagdish Chhabi Nath and Others, 2015(5) SCC 423.**

On this basis, it was contended that the writ petition deserved to be dismissed.

5. Heard learned counsel for rival parties. As regards the contention that the writ petition under Article 226 of the Constitution of India would not be maintainable because in the present case order of the Civil Court was made subject matter of challenge, there cannot be any debate about it, in view of the position of law which was emphatically reiterated in the judgment of **Radhey Shyam and another Vs. Jagdish Chhabi Nath and Others** (supra).

6. Be that as it may, even if this writ petition is treated to be a writ petition under Article 227 of the Constitution of India, the petitioner would then have to satisfy this Court as to why the jurisdiction ought to be exercised by this Court to interfere with impugned order passed by the Trial Court.

7. The first contention raised on behalf of the petitioner is that a false statement was made in the application for condonation of delay and, therefore, on this short ground, as per the settled position of law, the Trial Court ought to have rejected the application, without going into the question of sufficiency of cause for condonation of delay demonstrated by the respondent. The allegation of falsehood is primarily

based on the contention that since the respondent Society entered appearance before the Trial Court through its Secretary, who had also filed reply to the application for grant of temporary injunction, the statement that the Administrative Officer Mr. Pillai was looking after the case, was clearly false and that, therefore, this aspect ought to have been appreciated by the Trial Court.

8. A perusal of the contents of the plaint, particularly paragraph No.5 thereof, as emphasized on behalf of the respondent does show that the petitioner himself has stated in the plaint that he was in touch with various authorities / representatives of the respondent society, including Mr. Pillai in respect of further action required to be taken by the respondent society in furtherance of agreement executed between the parties. In fact, it was specifically stated in the paragraph that the petitioner repeatedly contacted said Mr. Pillai, who assured that sale deed will be executed.

9. This portion of the plaint when read with the application for condonation of delay filed on behalf of the respondent would show that the statement made therein could not be said to be false. It was specifically stated on behalf of the respondent society that the said Mr. Pillai had been periodically on leave since the year 2007 and that considering his absence, now the respondent society was not sure whether he would be

reporting to the office of the society at all. The said statement was made in the application for condonation of delay filed on 16/08/2012, before the Trial Court. This would mean that according to the respondent society they had expected that the said Mr. Pillai would report to the office and that since according to them Mr. Pillai was looking after the said case they had waited and eventually when it was thought that Mr. Pillai may not contact the office of the respondent society, the application was moved along with the written statement to be taken on record. Only because the Secretary had affirmed the affidavit in respect of reply filed along with application for grant of temporary injunction, some time in December 2009, it could not be said that the aforesaid statement made in the application for condonation of delay was false. Therefore, this Court finds no substance in the first contention raised on behalf of the petitioner.

10. As regards the sufficiency of the cause for condonation of delay demonstrated by the respondent, this Court finds that the explanation regarding absence of Mr. Pillai and eventually the respondent society taking the steps to file the written statement appear to be convincing and this is what was taken into consideration by the Trial Court while allowing the application and directing the written statement be taken on record. The approach adopted by the Trial Court in the facts and circumstances of the present

case cannot be said to be erroneous, warranting interference at the hands of this Court under Article 227 of the Constitution of India. Therefore, the second ground raised on behalf of the petitioner is also found to be without any substance.

11. In view of above, it is found that this petition is without any merit and, therefore, it is dismissed.

12. Rule is discharged. It is made clear that the order passed by this Court will not come in a way of the parties to explore the possibility of settlement.

JUDGE

*MP Deshpande*