

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

CIVIL APPLICATION (O) NO. 625/2017
IN
MISC. CIVIL APPLICATION (ST.) NO. 5324/2017
IN
WRIT PETITION NO. 679/2011 (D)

Chandrashekhkar L. Pathak & anr.

..VS..

Vinayak H. Khotpal & ors.

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

Court's or Judge's orders

Shri A.M. Ghare, Advocate for the applicant(s)

CORAM : Z.A.HAQ, J.
DATED : 31/07/2019

S.C.S. No. 186/1997 filed by the applicants – petitioners praying for decree for specific performance of agreement of sale was decreed by the trial Court by the judgment dated 14/12/2005. The trial Court directed the non-applicants / respondents to execute the sale-deed of the suit property in favour of the applicants – petitioners by accepting the balance amount of consideration i.e. Rs. 1,43,000/- and hand over possession of the suit property to the plaintiffs. The trial Court had directed the plaintiffs to deposit the balance amount of consideration i.e. Rs. 1,43,000/- on or before 25/01/2006. The plaintiffs failed to deposit the amount within the stipulated time, and had filed an application under Section 148 of the Code of Civil Procedure praying that time to deposit the amount of Rs. 1,43,000/- be extended till 13/03/2006. This application was filed on 13/03/2006. The trial Court had dismissed the

application. The order passed by the trial Court dismissing the application under Section 148 of the Code of Civil Procedure was challenged by the applicants / petitioners before this Court in writ petition. As some non-applicants / respondents were not served and the applicants – petitioners had not taken effective steps for serving notices of the petition on the unserved non-applicants / respondents though repeatedly time was granted to the applicants – petitioners since April 2011, ultimately by the order dated 26/03/2013, this Court directed as follows:-

“If the petitioners do not take steps for removal of office objection in regard to the unserved respondents within a period of two weeks, the writ petition would stand dismissed without further reference to the Court.”

The applicants / petitioners have not pointed out that steps were taken by them within two weeks to serve the unserved respondents. The learned advocate for the applicants – petitioners has pointed out that M.C.A. (St.) No. 6470/2013 was filed by the petitioners on or about 04/04/2013 praying that the petition dismissed against the respondent nos. 2, 3, 7 and 18 be restored. This MCA is not disposed.

The applicants – petitioners then filed M.C.A. (St.) No. 5324/2017 praying that the petition dismissed against the respondent no. 18 as per the order passed by the Registrar (J.) on 09/10/2013 be restored and the petitioners be permitted to serve the respondent no. 18 by paper publication. Photo copy of the order passed by the Registrar

(J.) on 09/10/2013 is filed alongwith the MCA. By this order dated 09/10/2013, the learned Registrar(J.) recorded that as the petitioners had failed to take steps to serve the respondent no. 18, the petition against the respondent no. 18 was dismissed. It is not understood as to how the Registrar (J.) had passed the order on 09/10/2013, when by the order passed by the Court on 26/03/2013, entire petition stood dismissed after two weeks of passing of the order dated 26/03/2013, as the petitioners had failed to take steps to serve the unserved respondents.

Be that as it may, as the MCA is filed by the petitioners after the prescribed period of limitation, this civil application seeking condonation of delay of 1215 days in filing the MCA is filed. It is stated that the petitioners had lost sight of the fact that the respondent no. 18 was not served by paper publication and the delay caused in moving the MCA is bonafide and due to oversight.

The explanation given by the petitioners for the inordinate delay in moving the MCA is not sufficient, specially if examined in the light of the earlier conduct of the petitioners. It is on record that the petitioners had been negligent in prosecuting the matter and because of the negligence of the petitioners and the inordinate delay, the respondents cannot be put to prejudice.

Hence, the CA is **dismissed**. Consequently, the M.C.A. (St.) No. 5324/2017 is rejected.

JUDGE