

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

WRIT PETITION NO.5036/2017

Shri Sheshrao Rajeramji Wadnerkar

..Vs..

Shri Bhimrao Rejeramji Wadnerkar through Legal Heir Dilip S/o Bhimrao
Wadnerkar

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

Court's or Judge's orders

Shri N.S. Bhelkar, Advocate for the petitioner.
Shri Vinay Dahat, Advocate for the respondent.

CORAM : Z.A. HAQ, J.

DATED : 26.7.2019.

Heard.

2] The petitioner / original judgment debtor had filed an application under Order 9 Rule 13 of the Code of Civil Procedure praying that the *ex-parte* judgment and decree passed against him be set aside. As there was delay of about 14 years in filing the application under Order 9 Rule 13 of the Code of Civil Procedure, an application praying for condonation of delay was also filed. This application praying for condonation of delay is dismissed by the impugned order.

3] The *ex-parte* judgment was passed on 6th October, 1994.

The petitioner had filed Civil Suit
No.111/1999 seeking declaration that the *ex-parte*

judgment and decree passed in Civil Suit No.109/1992 was not binding on the petitioner / judgment debtor. Civil Suit No.111/1999 was dismissed on 24th July, 2008 and then the petitioner / judgment debtor filed the application under Order 9 Rule 13 of the Code of Civil Procedure on or about 12th September, 2008.

4] The judgment debtor explained the inordinate delay by putting blame on his Advocate stating that the Advocate, had told the petitioner / judgment debtor that he was not required to attend the proceedings on every date. Learned trial Judge has rightly refused to accept the explanation given by the judgment debtor for the inordinate delay. A litigant / party is required to follow up the proceedings and attend the proceedings. It cannot be said that the lawyer would give service to the litigant / party at his doorstep, unless lawyer himself admits that he had assured the party of such service.

As I find that the learned trial Judge has properly dealt with the matter, I am not inclined to interfere with the impugned order passed by the trial Court.

5] The writ petition is **dismissed** with costs quantified at Rs.5,000/- (Rs. Five Thousand) to be paid by the petitioner to the respondent / plaintiff. The petitioner / defendant shall deposit the amount of costs before the Executing Court within one month, failing which the Executing Court may pass appropriate orders against the petitioner / defendant treating it as non-

compliance of the order passed by this Court and, the Executing Court shall also recover the amount of cost from the petitioner / defendant.

JUDGE

Tambaskar.