

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

**Writ Petition No.5142 of 2016**  
**Shivaji Ekapure & Anr. Vs. The Through Collector, Wardha & Others**

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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. N.A. Gaikwad, Advocate for petitioners  
Mrs. Mrunal Naik, AGP for respondent No.1.  
Mr. J. Mokdam, Advocate for respondents No. 2 and 3.

**CORAM : MANISH PITALE, J.**

**DATED : NOVEMBER 22, 2019**

By this writ petition, the petitioners have challenged the orders passed by the Court of Civil Judge (Senior Division), Wardha (Trial Court), whereby application for condonation of delay in moving the application for restoration of the suit was rejected and order dated 27/04/2016, passed by the Court below, whereby appeal filed by the petitioners stood dismissed.

2. In this case, a notice was issued to the petitioners on 15/1/2008, to vacate the premises in question. The said notice was issued by respondent No.2 i.e. Zilla Parishad, Wardha, through its Chief Executive Officer. The petitioners filed Regular Civil Suit No. 80/2008, challenging the said notice seeking an order of injunction. The said suit was dismissed in default on 07/03/2011.

3. Thereafter, the petitioners moved an application for restoration of the suit along with application for condonation of delay of 132 days in moving restoration. The Trial Court granted sufficient opportunities to the parties to lead evidence in support of the said application and by order dated 28/10/2015, the application for condonation of delay filed by the petitioners was rejected by the Trial Court. It was found that the ostensible reason for delay was that the petitioner No.1 was suffering from typhoid. In support of such reason, the petitioners intended to examine a private Doctor. The Trial Court in its order had recorded that when opportunity was given for the petitioners to produce the said Doctor, neither the petitioners nor the Doctor were present in the Court. Thereafter, an application was moved for presenting the Doctor in evidence, which was allowed and summons were issued to the said Doctor, which were served. Despite the same, the Doctor did not remain present in the Court and the petitioners failed to take any steps in the matter. On this basis, the Trial Court was found that sufficient ground for condonation of delay was not made out and the application was dismissed.

4. Aggrieved by the same, the petitioners filed an appeal before the Court below. By order dated 27/04/2016, the appeal stood dismissed and the findings rendered that the petitioners had failed to

show sufficient cause for condonation of delay of 132 days, were confirmed.

5. In this writ petition, notice was issued and the respondents were served.

6. The record shows that the writ petition stood dismissed in default as against respondent No.4.

7. The learned counsel for the petitioners submitted that an opportunity needs to be granted, in the interest of justice, to the petitioners to examine the Doctor, so as to prove the genuineness of the ground for condonation of delay pressed into service on behalf of the petitioners. On this basis, it is submitted that the impugned order may be set aside and the matter may be remanded to the Trial Court for fresh consideration of the application for condonation of delay.

8. The learned counsel for the respondents has strongly opposed the application by pointing out that the Court below had recorded that the approach adopted by the petitioners, demonstrated that not only sufficient cause for condonation of delay was not demonstrated, but, no steps were taken despite opportunities given to the petitioners to place on record material in support of the prayer for condonation of delay. It was further pointed out that, after dismissal of the appeal by the Court below

possession of the premises was taken and now a Primary Health Center is operating from the said premises.

9. As noted above, this writ petition stood dismissed in default as against the very respondent No.4 i.e. Primary Health Center, which is in occupation of the premises. No steps have been taken by the petitioners in the present writ petition also as regards dismissal of the petition in default against respondent No.4.

10. A perusal of the impugned orders passed by the two Courts below show that despite sufficient opportunity being granted, the petitioners failed to take necessary steps in support of their prayer for condonation of delay. A mere statement was made that the petitioner No.1 was unwell and, therefore, the petitioner could not approach the Trial Court within time seeking restoration of the suit, which itself stood dismissed for default as far back as on 07/3/2011. Even before this Court, despite dismissal of the writ petition as against respondent No.4, which is now said to be in occupation of the premises, no steps have been taken by the petitioners.

11. In view of above, this Court refuses to exercise writ jurisdiction in the present writ petition, having found that the reasons given by the two Courts

below while passing impugned orders were justified.

12. The present writ petition is dismissed.

JUDGE

*MP Deshpande*