

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

**WRIT PETITION NO. 4775/2019**

Kondba P. Takalkar

..VS..

Babarao P. Takalkar

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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

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Shri A.M. Gedam, Advocate for the petitioner  
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**CORAM : Z.A.HAQ, J.**  
**DATED : 15/07/2019**

Heard.

The petitioner – original defendant who suffered ex-parte decree on 26/07/2001, filed an application for setting aside the ex-parte decree, after about 12 years and 3 months. As there was delay in filing the application for setting aside the ex-parte judgment and decree, the petitioner had filed the application praying for condonation of delay which is dismissed by the impugned order. In the application filed by the petitioner praying for condonation of delay, the petitioner stated that he had engaged a lawyer to represent him in R.C.S. No. 08/1998, and the lawyer had told the petitioner that he is not required to attend the proceedings and the lawyer would inform the petitioner whenever he is required to attend the proceedings.

Except for this explanation, there is nothing on record to justify the inordinate delay of 12 years and 3 months in filing the application for setting aside the ex-parte

judgment and decree. It cannot be accepted that a party would wait for a call from the lawyer indefinitely and would not make any inquiry about the progress of the proceedings.

The learned advocate for the petitioner submitted that the trial Court should have considered the prayer of the petitioner for condonation of delay liberally. To support this submission, reliance is placed on the judgment given by this Court in the case of Dr. Ashok Rajmal Mehta vs. Shree Tirthankar Co. reported in 2018 (1) Mh.L.J. at page 185.

I am conscious that the prayer for condonation of delay should be considered liberally and the party should not be deprived of prosecuting/defending the matter on merits, however, the delay cannot be condoned simply on the asking by the party overlooking the fact that the rights have crystallized in favour of the decree holder. The explanation given by the petitioner for the delay of 12 years and 3 months in filing the application for setting aside the ex-parte judgment and decree cannot be accepted. The learned trial Judge has rightly dismissed the application. It cannot be said that the impugned order suffers from any illegality or error of jurisdiction which necessitates interference by this Court in the extra-ordinary jurisdiction.

Hence, the writ petition is **dismissed**. No costs.

**JUDGE**