

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

WRIT PETITION NO.3880/2019

Joharmal Trading Company

..Vs..

The Collector, Buldhana and others

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

Court's or Judge's orders

Shri S.M. Vaishnav, Advocate Advocate for the petitioner.
Ms. Geeta Tiwari, A.G.P. for respondent Nos.1 and 2.

CORAM : Z.A. HAQ, J.

DATED : 7.6.2019.

Learned Advocate for the petitioner has filed pursis dated 7th June, 2019 stating that the petitioner is willing to deposit Rs.8,000/- to compensate the respondents, if delay is condoned and opportunity is granted to the petitioner to pursue its claim. The tenor of puris shows that the petitioner is trying to impose conditions on this Court and this cannot be accepted. Pursis filed by the petitioner is rejected.

Heard learned Advocate for the petitioner and learned A.G.P. for respondent Nos.1 and 2.

The petitioner had filed civil suit praying for decree for recovery of an amount of Rs.12,885/- alongwith interest, and damages of Rs.1,87,115/-. This suit was filed in 2005. The civil suit came to be dismissed on 16th March, 2012. The petitioner had filed an application praying for restoration of the civil suit in April, 2014. As there was delay in filing this application,

the petitioner had filed an application praying for condonation of delay under Section 5 of the Limitation Act. By the impugned order, learned trial Judge has dismissed the application filed by the petitioner under Section 5 of the Limitation Act.

With the assistance of learned Advocate for the petitioner and learned A.G.P., I have examined the material placed on record. The facts on record show that the inordinate delay of more than 2 years is sought to be justified on the ground that the Advocate representing the petitioner had given an assurance that whenever the presence of plaintiff would be required, intimation about it would be given to the plaintiff. The spacious plea taken by the petitioner / plaintiff to explain the inordinate delay in filing the application for restoration of civil suit cannot be accepted. It is the duty of the party to attend the proceedings. In a given case, such explanation can be accepted but for that, affidavit of the Advocate on whom the blame is put, should be on record and concerned Advocate should accept before Court that he had given such assurance to the party. In the present case, affidavit of the concerned Advocate on this point is not filed by the petitioner / plaintiff. In the absence of the affidavit of concerned Advocate on record, the submission made on behalf of the plaintiff blaming concerned Advocate cannot be accepted.

I find that the learned trial Judge has properly appreciated the facts on record and has rightly rejected the application filed by the petitioner. 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. Writ petition is **dismissed**. In the circumstances, the parties to bear their own costs.

JUDGE

Tambaskar.