

FARAD CONTINUATION SHEET No.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO. 6285/2019

(PURNABAI DEWAJI MESHARAM & OTHERS **VERSUS** RAJENDRA RAMLAL JAISWAL)

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

Court's or Judge's orders

Mrs. R.S. Sirpurkar with Ms Divya Joshi, counsel for petitioners.
Shri A.A. Dhawas, counsel for respondent.

CORAM : A.S. CHANDURKAR, J.

DATE : OCTOBER 07, 2019.

The challenge raised in the present writ petition is to the order passed by the Appellate Court condoning delay of about 196 days in restoring the proceedings in Regular Civil Appeal No.114 of 2007 that were dismissed in default on 16.08.2016.

In the application for condonation of delay, it has been stated that after dismissal of the said proceedings, the fact that the same has been dismissed was not informed by the concerned counsel. As a result the respondent changed his counsel and engaged another counsel. Knowledge of the dismissal of the appeal was got on 27.03.2017 after which the present application was filed. By filing a reply, the petitioners opposed the said application. The Appellate Court accepted the reasons mentioned in the application and by imposing costs of Rupees Two Thousand, it condoned the delay.

Mrs. R.S. Sirpurkar, learned counsel for the petitioners submitted that no sufficient cause was shown by the respondent for having the delay condoned. The respondent was prosecuting the proceedings in Special Darkhast No.31 of 2004 which proceedings were being conducted in the adjoining Court. Despite having

knowledge about those proceedings, the respondent put up a false case that he was not informed by his counsel and thus sought to blame him for the period of delay. The respondent was not diligent and therefore the delay was not liable to be condoned. Placing reliance on the decision in *Rajendra Namdeorao Akre Versus Rajkumar Bhalerao Balbudhe & Another* [2016(7) All MR 86], it is submitted that in absence of sufficient cause being shown, the delay could not have been condoned by imposing costs. In the alternate without prejudice it is submitted that if the delay is to be condoned, higher costs are liable to be imposed on the respondents.

On the other hand, Shri A.A. Dhawas, learned counsel for the respondent supported the impugned order. It is submitted that the case was transferred from one Court to the another. Since his counsel did not inform him about the status of the case, the respondent could not get knowledge about the dismissal of the appeal in default. He relied on the averments made in the application dated 29.03.2017 and contended that necessary explanation had been duly assigned. He submitted that the client should not suffer for the mistake of the counsel. It was thus submitted that the impugned order is liable to be maintained.

On hearing the learned counsel for the parties and on perusing the documents on record, it is seen that the impugned order does not suffer from any infirmity. The respondent has assigned reasons for the delay which appear to be acceptable. The proceedings were transferred from one Court to another Court. The trial Court accepted the reasons assigned and balanced the equities by directing the respondent to pay costs of Rupees Two Thousand to the petitioners while allowing the application for condonation of delay. The decision in *Rajendra Namdeorao Akre* would not help the case of the petitioners.

Hence, for the reasons aforesaid, the writ petition stands dismissed. However, the proceedings in the appeal being Regular Civil Appeal No.114 of 2007 are expedited. The same be decided preferably by the end of December-2019. No costs.

JUDGE

APTE