

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

CIVIL APPLICATION (O) NO. 30/2017

IN

MISC. CIVIL APPLICATION (ST.) NO. 19758/2016

IN

MISC. CIVIL APPLICATION NO. 474/2016 (REJ.)

IN

WRIT PETITION NO. 2919/2009 (D)

Raza Begum Wd/o Abdul Hamid Thru LR's

..VS..

Niyazbi Wd/o Sk. Kasam & ors.

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

Court's or Judge's orders

Shri M.S. Sharma, Advocate for the applicant(s)

CORAM : Z.A.HAQ, J.

DATED : 15/07/2019

The petitioners – judgment debtors had filed appeal before the District Court under Section 96 of the Code of Civil Procedure to challenge the final decree. There was delay of about 24 days in filing the appeal, and therefore the petitioners had filed an application praying for condonation of delay. One of the submission was that infact there was no delay in filing the appeal. By the order dated 02/07/2009, the learned District Judge held that there was delay in filing the appeal and there was no satisfactory explanation, and dismissed the application praying for condonation of delay. This order was challenged by the petitioners before this Court in Writ Petition No. 2919/2009. By the order dated 28/07/2009, Rule was issued and interim order was granted. When the writ petition was listed before the Court on 26/09/2014, none appeared for the petitioners. One week's

time was granted to pay Bhatta and supply copies of the petition for service of notice on the unserved respondents. The petitioners failed to supply the copies and pay Bhatta, and therefore by the order dated 31/10/2014, interim order granted on 28/07/2009 was vacated and the petitioners were granted four weeks' time to pay Bhatta. Again, the petitioners failed to pay Bhatta, and therefore the learned Registrar (J.) passed an order on 10/12/2014 and dismissed the petition against the respondent nos. 2 (c) (d) and 8 (c) (d) (e) and 12. The petitioners failed to file any application for restoration of the petition against the respondent nos. 2 (c) (d) and 8 (c) (d) (e) and 12. When the petition was listed before the Court on 17/11/2015, 19/11/2015 and 20/11/2015, again none appeared for the petitioners, and therefore on 20/11/2015, the petition was dismissed for want of prosecution. On 25/04/2016, the petitioners filed the application praying for restoration of the petition. This miscellaneous civil application was listed before the Registrar (J.) on 04/07/2016 and as it was not attended by the petitioners or their lawyer, the miscellaneous civil application was dismissed. On 21/09/2016, the petitioners filed application praying that the miscellaneous civil application be restored and as there was delay in filing the miscellaneous civil application, this application praying for condonation of delay is filed.

The records show that throughout, the petitioners had been negligent in prosecuting the matter and it is causing serious prejudice to the decree holders.

Considering the conduct of the petitioners and as I find that the explanation given by the petitioners for the delay in filing the miscellaneous civil application is not sufficient, the civil application is **dismissed**. Consequently, the miscellaneous civil application is rejected. No costs.

JUDGE

Ansari