

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO.6588 OF 2019

Divakar s/o Sadhuji Gedekar, Tah. Hinganghat, Dist. Wardha

-vs-

Gram Panchayat Nandgaon, Thr. Its Secretary, Tah. Hinganghat, Dist. Wardha

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Shri Raghav A. Bhandakkar, Advocate for petitioner.
Smt S. V. Sirpurkar, Advocate for respondent.

CORAM : A. S. CHANDURKAR, J.

DATE : November 27, 2019

An order passed by the appellate Court refusing to condone delay in filing a miscellaneous appeal is under challenge.

The petitioner is the original plaintiff who has filed a suit for declaration that Resolution No.8/3 dated 30/10/2013 as well as Resolution No.6 dated 28/06/2015 passed by the Gram Panchayat are null and void and not binding on the plaintiff. In that suit he filed an application for grant of temporary injunction which was rejected by the trial Court on 17/08/2018. He therefore filed a miscellaneous appeal on 04/02/2019 along with an application for condonation of delay. According to the petitioner since he was not keeping well for substantial period, the appeal could not be filed within limitation. Along with that application medical certificate dated 17/08/2018 was also filed. The application was opposed and by the impugned order it has been held that the delay was not properly explained.

2. Heard Shri R. Bhandakkar, learned counsel for the petitioner and Smt R. Sirpurkar, learned counsel for the respondent. Perused the medical certificate which does indicate that the period of illness is from 10/09/2018. The said certificate is dated 04/01/2018. It is submitted that it should read as 04/01/2019. Issuance of the certificate by a pediatrician by itself would not dilute its effect considering the nature of the ailment. Though the impugned order is supported by the learned counsel for the respondent, considering the fact that the trial Court did not grant any injunction and the application for condonation of delay is supported by medical certificate, one opportunity to contest on merits is liable to be granted.

3 Accordingly the order dated 20/07/2019 passed in M.J.C. No.02/2019 is set aside. The delay in filing the miscellaneous appeal stands condoned. The appeal be decided on its merits and in accordance with law.

The writ petition is allowed. Rule is made absolute in aforesaid terms with no order as to costs.

JUDGE