

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

CIVIL APPLICATION (CAO) NO. 1941 OF 2019
IN
APPEAL AGAINST THE ORDER NO. 49 OF 2015

(Smt. Sunita Purshottam Moon Vs. Shri Aniruddha P. Moon & Anr.)

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

Court's or Judge's orders.

Shri S.D. Malke, Counsel for the appellant.
None appeared for the respondents.

CORAM : S.M. MODAK, J.
DATE : 21st NOVEMBER, 2019.

This Court as per the order dated 3rd July, 2019 was pleased to dismiss the appeal from order no. 49 of 2015. In this appeal the order dated 5th May, 2012 passed by the learned Principal District Judge, Wardha was challenged. By the said order Shri Aniruddha Moon who is respondent no.1 in this appeal is appointed as a guardian of mentally ill child Priti.

2. Aniruddha – respondent no. 1 is natural brother whereas the present appellant is the second wife of Purshottam Moon (father of the daughter – Priti). Appellant claimed that appointment of guardian was made without hearing and in fact she is a proper person to be appointed as a guardian.

3. Learned counsel Shri Sanjay Bhandare

appearing for the appellant at that time informed this Court by Pursis Stamp no. 16682 of 2018 about lack of instructions to proceed with the matter on behalf of the the appellant. This court accepted the said pursis and was pleased to dismiss the matter in default / for want of prosecution. Appellant claims that she was not being informed prior to filing of the said pursis.

4. She want restoration of the said appeal. There is a delay of 59 days in asking for restoration. The reason quoted in the application is she got knowledge about the dismissal from the office of respondent no.2 on 27th September, 2019. It was for the purpose of drawing of pension of deceased Purshottam and on that basis, the appellant contacted the previous advocate on 29th September, 2019 and then took appropriate steps.

5. It is true that the pursis does not say that appellant was informed in writing by the concerned advocate prior to filing of the pursis. It says only of an attempt to contact the appellant on telephone. Even the order dated 3rd July, 2019 does not mention about the issuance of notice to the appellant prior to passing of the said order. It is no doubt that it is the job of the appellant to be in touch with the learned advocate. Be that as it may, any litigant must not be denied of an opportunity to seek adjudication of her

grievance. On this background the appellant is having no source from where she can get information. Hence, the reasons quoted for condonation of delay are acceptable. Matter be restored subject to costs. Respondents have not appeared though served and accordingly I have decided this application after hearing the appellant only. Hence the order –

ORDER

- i. Application is allowed
- ii. Delay of 59 days caused in filing of restoration application is condoned.
- iii. Appellant to deposit costs of Rs.1000 in the Court.
- iv. Appeal Against Order No. 49 of 2015 is restored back.
- v. Application is disposed of

APPEAL AGAINST ORDER NO. 49 OF 2015

After the compliance, fresh notice be issued to both the respondents.

Stand over after three weeks.

JUDGE