

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

WRIT PETITION NO. 20/2018

(HARIBHAU SHYAMRAO THAKRE **VERSUS** PUSHPA UMRAO THAKRE & OTHERS)

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

Court's or Judge's orders

Shri H.P. Lingayat, counsel for petitioner.
 Shri M.V. Amle, counsel for R-1 to 4.

CORAM : A.S. CHANDURKAR, J.

DATE : JUNE 17, 2019.

Heard.

The petitioner is aggrieved by the order dated 22.09.2017 whereby the Appellate Court has refused to condone the delay in seeking restoration of appeal that came to be dismissed in default on 21.07.2008.

The petitioner is the defendant no.2 in the suit filed by the respondents herein for partition and separate possession. The said suit came to be decreed on 22.12.1999. The defendants then filed an appeal and on 21.07.2008, the said appeal was dismissed in default on the ground that the defendants and their advocate failed to appear on various dates. Thereafter on 07.06.2017, the defendants sought condonation of delay in seeking restoration of the said appeal. By the impugned order, the Appellate Court has refused to condone the delay of about 8 years 9 months and 14 days.

Shri H.P. Lingayat, learned counsel for the petitioner submitted that the Appellate Court ought to have accepted the reasons that were stated in the application for condonation of delay. The petitioner was in contact with his counsel but the necessary information was not given to the petitioner despite the fact that steps had been taken for diligently pursuing the appeal.

After receiving notice of the proceedings of execution on 12.07.2016, similar attempts were made by the petitioner and after applying for the certified copies the delay was sought to be condoned. It was thus submitted that considering the reasons mentioned in the application, the Appellate Court ought to have condoned the delay and granted an opportunity to contest the appeal on merits.

Shri M.V. Amle, learned counsel for the respondent nos.1 to 4 supported the impugned order. According to him, though the petitioner got knowledge of the proceedings on 12.07.2016, the application for grant of certified copies was made on 13.04.2017 without any sufficient cause. Except bare statements, there is no further material on record to substantiate the stand taken therein. As there was no sufficient explanation, the delay could not be condoned.

Heard the learned counsel and perused the documents placed on record. The appeal as filed by the petitioner in the year 2000 was dismissed for want of prosecution on 21.07.2008 after noting continuous absence of the petitioner and his counsel. The decree passed in favour of the respondents was sought to be executed and notice in that regard was served on the petitioner on 12.07.2016. Despite that, the petitioner has waited till 13.04.2017 for making an application for grant of certified copies. The stand taken in the application for condonation of delay has not been sought to be substantiated by leading any evidence. The Appellate Court therefore was justified in observing that the delay of 8 years 9 months and 14 days has not been properly explained. It is found that there is absence of due diligence on the part of the petitioner. Hence, there is no reason to interfere with the order passed by the Appellate Court.

The Writ Petition is therefore dismissed. No costs.

JUDGE

APTE