

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

Writ Petition No. 574 of 2018

Sau. Savita W/o Milind Yadav

Vs.

Nandkishor S/o Dyandev Saste

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

Court's or Judge's orders

Mr. G.S. Umale, Advocate for petitioner.
Mr. A.M. Tirukh, Advocate for respondent.

CORAM : MANISH PITALE, J.

DATED : APRIL 16, 2019

By this writ petition, the petitioner has challenged the order dated 25/10/2017, passed by the Court of Civil Judge (Sr. Dn.), Akola (trial Court), whereby the application for condonation of delay in filing the application for setting aside ex-parte decree has been rejected. The trial Court has held against the petitioner on the ground that false statements were made in order to explain the reason for approaching the Court after a delay of 61 days.

2. The respondent had filed a suit for refund of consideration and notice charges against the petitioner, which was decreed on 28/07/2016. It was held by the trial Court that despite of service of summons the petitioner

(original defendant) had failed to appear before the Court and, therefore, the suit was proceeded against her ex-parte. By the Judgment and order dated 28/07/2016, the trial Court partly decreed the suit and directed the petitioner to pay an amount of Rs.5,00,500/- along with simple interest @9% p.a. to the respondent.

3. The petitioner filed the application for setting aside the said ex-parte decree along with the application for condonation of delay. The reasons given in the application for condonation of delay were that at the relevant time, the petitioner was having certain differences with her husband and that she was not residing in her matrimonial house and that, therefore, she became aware about passing of the ex-parte decree against her only after she received the notice in the execution proceeding initiated by the respondent. It was also contended that the petitioner had been attending to her father-in-law who was ailing, due to which summons were not served upon her, while the trial Court wrongly proceeded on the basis that she had been served with the summons and that, therefore, the ex-parte decree was required to be set aside.

4. In the impugned order, the trial

Court has taken into consideration the aforesaid reasons put forth by the petitioner. It is found that, as a matter of fact, the petitioner was indeed residing at the very address given in the proceeding before the trial Court. All that was stated was that when the Bailliff had sought to serve summons on the petitioner she was having certain differences with her husband and that, therefore, she was not served on the address where she was actually residing at the relevant time. While making the aforesaid statement no material to support the said assertion was placed on record on behalf of the petitioner. Apart from the fact that the Bailliff report shows that the summons were sought to be served on the address mentioned in the plaint, when the husband of the petitioner repeatedly stated that the petitioner had gone out for her work, the said report also shows that when the petitioner was found personally present at the said address, she refused to receive on the ground of differences with her husband. Thereafter, the material appreciated by the trial Court shows that when the execution proceedings were initiated and notice was issued, the petitioner was very much served on the same address on which the Bailliff had visited to serve summons of the suit. In the face of the said material, the trial Court has found

on facts that there was nothing to show that the petitioner had ever left her matrimonial house and that the material on record sufficiently demonstrated that she was residing at the same address throughout the proceedings, both at the stage pendency of suit and thereafter when the execution proceedings were initiated.

5. On this basis, the trial Court found that the theory put up by the petitioner for explaining the delay in approaching the Court for setting aside the ex-parte decree and the claims made to show that she was in fact never served with the summons, were based on falsehoods and that such reasons were given in a very casual manner. On this basis, although the trial Court found that the delay was about 61 days, but because the petitioner had made false and incorrect statement, the delay did not deserve to be condoned. Reliance was placed on the judgments of the Hon'ble Supreme Court to reject the application for condonation of delay.

6. Even before this Court in the Writ petition, the petitioner has failed to place on record any material in support of the statements that were made before the court below in order to explain the delay. The contentions raised on

behalf of the petitioner are nothing but repetition of what was stated before the trial Court. This Court does not find any reason to differ with the findings rendered by the trial Court that the statements made in the application and the contentions raised on behalf of the petitioner before the trial Court while seeking condonation of delay were based on incorrect facts and false statements.

7. In such a situation, it cannot be said that the trial Court has committed any error in following the settled position of law as laid down by the Hon'ble Supreme Court in the case of **Binod Bihari Singh Vs. Union of India (1993) 1 Supreme Court Cases 572 and Pundlik Jalam Patil (Dead) by LRs Vs. Executive Engineer Jalgaon Medium Project and another (2008) 17 Supreme Court Cases 448**, wherein the Hon'ble Supreme Court has laid down that an incorrect statement made in the application for condonation of delay itself would be sufficient to reject the application without any further inquiry as to whether the averments made in application revealed sufficient cause to condone the delay.

8. In view of the fact that the trial Court has applied the settled position of law

while rejecting the application for condonation of delay filed on behalf of the petitioner, this Court refuses to exercise writ jurisdiction in favour of the petitioner.

9. Accordingly, the writ petition is found to be without any merits and it is dismissed.

JUDGE

MP Deshpande