

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.2903 OF 2021**

Shri Bhima Laxman Dhakne and Ors.

.....Petitioners

V/s

Shri Tryambak Sahadu Chavan and Anr.

..... Respondents

Mr. Nikhil M. Pujari for the Petitioners

Mr. Nagesh Y. Chavan for the Respondents.

CORAM: NITIN W. SAMBRE, J.

DATE: JULY 16, 2021

P.C.:-

1] In proceedings initiated under Order 23 Rule 3 of Code of Civil Procedure taken out by the Petitioners, delay of about 15 months was refused to be condoned by the learned Court below on the ground that same was not properly explained.

2] The learned Counsel for the Petitioners would urge that the Applicants/Petitioners who are illiterate were unable to understand consequences of compromise decree of which setting aside is sought and that being so, out of incorrect illegal advice delay is caused which is bonafide.

3] Mr. Chavan, the learned Counsel for the Respondents would support the order impugned, as according to him, neither delay is properly explained nor there are bonafides.

4] It appears that the Petitioners are seeking setting aside of the compromise decree on the ground of fraud. The principle which is pressed in support of prayer for setting aside of compromise decree is, fraud vitiates everything. No doubt, above principle still governs the field. However, Court cannot be ignorant to the fact that Applicants are required to explain the delay. But for the ground of illiteracy, incorrect advice etc., no specific grounds are pleaded thereby explaining delay. In my opinion, grounds as are pressed into service cannot be termed to be sufficient for condoning delay. However, Court equally needs to be sensitive to the cause as has been pleaded i.e. compromise decree is obtained by fraud.

5] In the aforesaid background, in my opinion, order

impugned passed by the learned Court of Joint Civil Judge, Senior Division, Nashik on 11/2/2021 in Civil Misc. Application No.262 of 2019 needs to be set aside and delay caused in preferring the said application needs to be condoned on payment of costs of Rs 25,000/- to be deposited in the Court below within a period of six weeks from today, which Respondents will be entitled to withdraw. Order accordingly.

(NITIN W. SAMBRE, J.)