

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.5542 OF 2022

Mr. Madhukar Shripati Kamale

..Petitioner

Versus

Mr. Vijay Sudhakar Ronghe

..Respondent

Mr. Harshad Sathe i/by Sachin B. Chandan, for the Petitioner.

Mr. Purushottam G. Chavan, for the Respondent.

Petitioner in person present.

CORAM : NITIN W. SAMBRE, J.

DATE : 4th MAY, 2022

PC.

1. This petition is directed against the order impugned dated 6th October, 2021 passed by the learned District Judge, wherein prayer for condonation of delay of 425 days caused in moving application for restoration of Civil Appeal No.390 of 2017 came to be rejected.

2. The aforesaid appeal was dismissed for want of prosecution on 23rd October, 2019. The said appeal is directed against the judgment and decree dated 29th April, 2017 passed against the petitioner/defendant whereby the suit claim for setting aside sale-deed dated 10th May, 2012 with an agreement to sale dated 6th February, 2012 came to be allowed. The said documents were ordered to be set aside and the respondent/plaintiff is

permitted to deposit an amount of Rs.7,10,000/- towards balance consideration of the suit property so as to get the sale-deed of the suit property executed in his favour.

3. I have heard respective counsels.

4. The cause cited by the petitioner in support of the condonation of delay is ailment of his brother Mahipati who died of liver failure. Though the said fact could be inferred from the record, however, the period spent in pursuing the health issue of brother Mahipati is not sufficient to infer that there was bonafide cause which has resulted in delayed filing of application for restoration.

5. Rather the counsel for respondent was justified in claiming that the very conduct of the petitioner in prosecuting an appeal and execution proceedings depicts that he was well aware of the dismissal of appeal.

6. In response to the Court' query, counsel for the petitioner on instructions volunteers that an amount of Rs.1,00,000/- towards cost shall be deposited in the Trial Court within a period of six weeks from today.

7. Statement made since is on instructions of the petitioner, same is accepted as an undertaking to this Court. Subject to deposit

of aforesaid cost, order impugned dated 6th October, 2021 is set aside in view of consent extended by the counsel for the respondent. Respondent/decreed holder is permitted to withdraw the cost amount, if so deposited.

8. A further statement on the part of the petitioner that along with cost he shall be filing his written notes of argument in an appeal and shall not seek further adjournments is also accepted as an undertaking. In case, if the aforesaid undertakings are not complied by the petitioner in its true letter and spirit, the Appellate Court shall pass consequential order of non-compliance of the present order and accordingly, the Court below is permitted to proceed ahead with the execution of the decree. In case, if the order is complied with, hearing of the appeal be concluded expeditiously and in any case within a period of two weeks thereafter.

9. The petition stands allowed in above terms.

10. Parties hereto agree that they shall be appearing before the lower Appellate Court on 16th June, 2022, the date on which the petitioner shall be depositing cost and his written notes of arguments so as to conclude final hearing of the matter.

[NITIN W. SAMBRE, J.]