

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

WRIT PETITION NO. 1488 OF 2022

Pradeed Jaikumar Meshram and ors_ Vs. ___Dhanwan Naru Dahat and ors

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

Court's or Judge's orders

Mr. R.K.Borkar, Advocate for petitioner

CORAM : AVINASH G. GHAROTE, J.

DATE : 13/10/2022

1] Heard Mr. Borkar, learned counsel for the petitioners. Though the respondents are served, none appears.

2] The petition challenges the order dated 21.8.2021, whereby the application for grant of permission to deposit the amount of cost of ₹.2,000/- in the Court as was directed by the order dated 13.6.2018 (pg 30) has been rejected on the ground that the delay has not been sufficiently explained.

3] In a suit for specific performance, the Trial Court dismissed the suit by the judgment dated 17.4.1985. In appeal bearing RCA No. 57/1986, the learned Appellate Court granted a decree on 2.1.1991 for specific performance, Second Appeal against which came to be dismissed on 6.8.2002. The decree as passed by the Appellate Court was put to execution in RD No. 35/2003. During the pendency of the second appeal, the original

Decree Holder Heeraman Tukaram Meshram had passed away and the execution proceedings were filed by his L.Rs., Kesharbai - the widow, JaiKumar and Sunilkumar - the sons, and Smt. Aruna and Archanabai - the daughters. The said execution proceedings came to be dismissed in default on 9.10.2014. Misc. Judicial Application No. 54/2016 was filed for condonation of delay and for granting an opportunity to participate in the proceedings, which came to be allowed on 13.6.2018, subject to the cost of ₹.2,000/- (pg.26), to be paid within one month of the date of the order. Since the same was not paid in time, an application for grant of permission to deposit the amount was filed vide MJC No. 63/2020 on 10.7.2020, which has been dismissed by the impugned order dated 21.8.2021 (pg.36), holding that the delay has not been properly explained.

4] Mr. Borkar, learned counsel for the petitioner submits that since the proceedings were prosecuted by Jailkumar and Sunilkumar, the sons of late Heeraman, Jaikumar who was suffering from cancer passed away on 27.9.18 and so also Sunilkumar who was looking after him also passed away on 8.9.2019, during the Covid-19 period, as a result of which the amount could not be deposited. It is contended that this was the reasonable explanation afforded for the delay.

5] The position about the demise of the aforesaid persons i.e. sons of late Heeraman has not been controverted and so also the position regarding Jaikumar suffering from cancer is reflected from order dated 13.6.2018, which reason already was accepted by the executing Court for allowing the MJC No. 54/2016 and there does not appear to be any reason, considering the demise of Sunilkumar on 8.9.2019 not to accept the explanation given, considering which the impugned order is hereby quashed and set aside and the delay is condoned, subject to the condition of deposit of the amount by 21.10.2022.

6] Petition is allowed in above terms. No costs.

JUDGE

Rvjalit