

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

WRIT PETITION NO. 836 OF 2022

1. Shri Mohan @ Bachhu s/o Krushnarao
Telang, aged about 58 years, occ. ;
Business,
2. Shri Shyam s/o Krushnarao Telang, aged
about 53 years, Occ : Business, Both R/o
House No.62-A, Masurkar Chowk, Juni
Mangalwari, Nagpur.

.... **PETITIONERS**

// **VERSUS** //

Shri Prakash s/o Nattuji Wanjari aged
about 63 years, Occ : Service, R/o Jag-
ganath Swami Road, Juni Mangalwari,
Nagpur.

.... **RESPONDENT**

Shri Sachin D. Khati, Advocate for the petitioners.

CORAM : ROHIT B. DEO, J.
DATED : 17/02/2022.

ORAL JUDGMENT :

Heard. With Consent, the petition is heard finally.

2. The petitioners are the tenants against whom Regular Civil Suit
207 of 2012 instituted by the respondent – landlord for eviction, recovery of
possession, arrears of rent and mesne profits, is decreed vide judgment and
decree dated 20.07.2016.

3. According to the tenants, the written statement was duly filed in the Trial Court and the landlord examined himself. The learned Counsel for the tenants did not cross-examine the landlord nor did the learned Counsel inform the tenants that they would have to adduce evidence to prove the averment in the written statement.

4. The tenants contend that it was on receiving notice of execution S.D. 23 of 2017 that the Counsel was contacted and he informed that the decretal amount will have to be deposited, which was accordingly deposited on 23.01.2018 and 23.02.2018. The tenants are now contending, or rather insinuating, that the Counsel suppressed the fact that the decree is of eviction and that it was when the tenants consulted some other Counsel (whose identity is not disclosed) that the tenants came to know that they have suffered a decree of eviction.

5. The tenants preferred an appeal and sought condonation of delay of 599 days and the case pleaded is that the earlier Counsel did not inform the tenants that the decree is of possession. The relevant averments read thus :

“3) That the applicant received notice of the execution proceeding vide S.D. No.23/2017 on..... The applicants contracted their counsel Smt. Puntambekar. The counsel informed to the applicants to deposit the decretal amount. The applicants deposited of Rs.10,000/- on 23/1/2018 and also deposited Rs.16003/- on 23/2/2018 towards the decretal amount in the court. Thereafter the applicants secured advised of another counsel who advised them that there is decree of possession and appeal is to be filed. The previous counsel did not informed to the applicants that the decree is for possession.

4) *That the applicants are illiterate persons. They are not aware legal knowledge. The applicant No.1 is running pan shop and applicant No.2 is labour work and they are mainting their family. The applicants are very poor persons. Similarly they have misguided by their counsel and as such they could not file appeal against the judgment and decree."*

6. The Appellate Court was pleased to reject the application for condonation of delay vide order dated 17.01.2022, which is impugned herein.

7. The Appellate Court considers the issue thus :

"07) Applicants have not stepped into witness box to substantiate their contentions and vide Exh-10 filed pursis that they do not want to adduce any evidence. The reason emerged from the application for causing delay is that the advocate did not inform the progress of the case and after receiving notice of the execution proceedings, no proper advice was given to them by their learned advocate about the nature of decree. After perusal of the application minutely, it is not contended that applicant inquired with their advocate but their advocate inspite of their enquiry did not tell anything about the status of their case. It is also not their contention that though they visited repeatedly and frequently to their advocate but the advocate did not furnish any information to them. The only contention is that their advocate did not inform them about the progress of the case. But what efforts they have taken to enquire the status of their case is not reflected from entire application. It is essential on the part of the applicants that they should atleast ask their advocate about the status of their case but it appears that this has not been done by the applicants for almost long 5 years since filing of their Written Statement in their suit. Applicants preferred to remain silent for long period which is quite unusual and appears to be improbable.

08) Perusal of their application clearly reveals that besides the reason that counsel did not inform, no specific date and specific contention are made by them. Even the applicants are not saying that after the final decision of the suit, they have contracted their counsel but she did not tell anything. Even after receipt of notice as per their own contention, application was moved after almost six months. Ignorance of law is not excuse to the applicants. Thus from the application, it can not

be said applicants behaved vigilantly and there is no inaction or no negligence on their part. The applicants have not issued a notice to their learned advocate who according to them has not performed her duty and role thereby misguiding them. There is no document on record filed by the applicants which shows that even any written letter or communication had been made by them with their advocate even till date. They have not filed any document or examined any one to show that as per the advice of another advocate, they are preferring this application. Even the name of other advocate who gave advice to them is not mentioned and the date of advice is also not mentioned.

09) *Thus the stray statement that they did not aware about the legal knowledge as illiterate person is not sufficient and can not be said in any manner a sufficient cause to condone the delay. The record shows that after filing the written statement, the applicants have not adduced any evidence nor deposited any amount of rent even after filing of this application. Applicants have not deposited any rent in this Court. Also the applicants have not explained that after receipt of notice dt.28/09/2017 why the appeal has not been filed immediately by taking necessary steps. Thus in the absence of specific, precise contention about the delay applicants have failed to establish sufficient cause and reason to condone the delay. The appearance in the execution itself is self-evidence to establish the fact that appellants have got knowledge of passing of impugned judgment and decree and thereafter even the applicants have not filed the appeal promptly. Thus it is seen that there is deliberate negligent and inaction on the part of the applicant. Thus there is no sufficient cause established by the applicants to condone the delay. Delay is not explained properly by the applicants. Thus it can not be said to be a case of bonafide mistake on the part of applicants. The applicants have not establish that there was no inaction and no laches on their part. On the contrary record shows that since inception of filing of the written statement, applicants acted negligently. Thus, as a consequence, considering over all facts and circumstances, in view of all attending facts, applicants are not entitled to get relief of condonation of delay to prefer appeal as prayed. Hence, I answer point No.1 in negative and answered accordingly. As a consequence, I pass following order.”*

8. I have no doubt in my mind, that the conduct of the tenants is not only devoid of *bona fide*, the conduct is dishonest and the Counsel is maligned by levelling unfounded and unsubstantiated allegations. In the

response to a specific query, the learned Counsel for the tenants does not dispute that no action whatsoever is initiated against the counsel.

9. I have come across similar if not identical allegations in matters after matters and it is high time that such sharp practices are dealt with an iron hand. In the present case, the allegations appear to be clearly false and are inherently incredible. The first allegation is that the tenants were asked not to appear and the second allegation is that while the Counsel did advise the tenants to deposit the decretal amount, that the decree is for possession was suppressed. The tenants are also not disclosing the name of the Counsel from whom they got acquainted with the 'correct facts'.

10. I am further in complete agreement with the reasons recorded by the learned Appellate Court which are culled out *supra*.

11. The petition is dismissed.

(ROHIT B. DEO, J.)

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