

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

Writ Petition No.1501/2020

Sachin Wahule V Sau. Varsha Wahule and another

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders

Mr. H.D. Futane, Advocate for petitioner.
Mr. P.S. Khubalkar, Advocate for resp.no.1.

CORAM : AVINASH G. GHAROTE, J.
DATE : 03-08-2022

Heard Mr. Futane, learned Counsel for the petitioner
and Mr. Khubalkar, learned Counsel for the respondent no.1.

2. The challenge in this petition is the order dated 19-11-2019 (pg 12), whereby the application for setting aside the order dated 14-03-2017 by which the Petition under Section 13 (1)(i-a) of the Hindu Marriage Act filed by the petitioner was dismissed for default on account of non appearance and not adducing evidence and also on account of non payment of the interim alimony.

3. Mr. Futane, learned Counsel for the petitioner submits that though the matter was fixed for evidence on 14-03-2017, on which date since the petitioner did not appear, the same came to be dismissed in default, therefore, an application for setting aside the order dated 14-03-2017 came to be filed on 05-05-2017

(pg 33) alongwith application for condonation of delay. The learned Court below, has dismissed the application for condonation of delay by the order 19-11-2019, holding that there was no sufficient cause shown for condonation of delay.

4. What is material to note is that, the difference in the time when the petition was dismissed in default and the date when the application for restoration was made, which would be a period of 51 days. It has already come on record that the petitioner is serving with Border Road Organization and was posted in Arunachal Pradesh at the relevant time, which ought to have been considered as cause enough to condone the delay of 21 days in filing the application for setting aside the order of dismissing the petition in default.

5. The impugned order does not indicate the consideration of the position in the proper perspectives, considering which, the same is hereby quashed and set aside and the application for condonation of delay is allowed. In view of above, the order dated 14-03-2017 is also quashed and set aside and the HMP Petition Case No.67 of 2016 is restored to file.

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

3.

(Avinash G. Gharote, J.)