

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

WRIT PETITION NO. 1863 OF 2022

Vitthal s/o Pandurang Bhagat
..VS..
Shri Gorakshan Sanstha, Amravati

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

Court's or Judge's orders

Ms. Radha Mishra, Advocate for petitioner.

CORAM : ROHIT B. DEO, J.
DATED : 05/04/2022.

The petitioner is the defendant in Regular Civil Suit 377 of 2017, which was instituted by the respondent – Trust, seeking eviction.

2. According to the Trust, the petitioner was an employee, who was permitted to occupy the suit property as a gratuitous licensee with the condition that the property shall be vacated upon superannuation. The Trust contended that while the petitioner superannuated on 30.09.2016 and received all the retiral benefits, he refused to vacate the suit premises.

3. The petitioner, who shall be referred to as the defendant hereinafter, appeared in response to the suit summon, and sought time to file written statement. The suit was adjourned to 10.04.2018 to enable the defendant to file written statement. The defendant neither filed the written statement nor did he appear in the suit thereafter, with the

result the Trial Court proceeded *ex-parte* and decreed the suit vide Judgment and Decree dated 04.09.2018.

4. The defendant preferred R.M.J.C. 1496 of 2019 seeking condonation of delay of 1 year and 15 days in preferring application for restoration of the suit, which is dismissed by the order impugned.

5. The defendant claimed that he was ill from 02.05.2018 to 30.01.2019 and it was only after he received notice of Execution that he appeared in the Court on 22.08.2019 and obtained the certified copy of the Judgment and Decree.

6. The petitioner placed on the record a medical certificate in support of the claim of illness. However, the petitioner did not examine the Doctor, who issued the certificate and therefore, the certificate is rightly not admitted in evidence. In the absence of the proof of the medical certificate, the learned Trial Judge rightly held that there is absolutely no material on the record to conclude that the defendant was suffering from such illness, and for such a period, as would justify the delay of 1 year and 15 days. The Trial Judge noted the admission given by the defendant in the cross-examination, that even before the alleged illness, he contacted his lawyer on 10.04.2018, which would mean that the defendant was aware that the suit was fixed for filing of written statement. The defendant has admitted that he did not thereafter contact the Counsel.

7. The learned Trial Judge has rightly observed, that

while an overly pendantic approach need not be adopted while considering the application for condonation of delay, no indulgence can be shown, if the explanation is found to be either frivolous or false or flimsy.

8. I see no error in the view taken by the learned Trial Judge.

9. The petition is dismissed.

JUDGE

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