

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

WRIT PETITION NO.3064 OF 2020

(M/s Saurkar Associates, thr. its Partner K. P. Saurkar Vs. Smt. Nirmaladevi w/o
Hargovind Agarwal and another)

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

Court's or Judge's orders.

Mr. A. M. Sudame, Advocate for Petitioner.
Ms. Archana Lanjewar, Advocate h/f Mr. N. R. Saboo, Advocate for
Respondent 1.

CORAM: ROHIT B. DEO, J.

DATE: 26th APRIL, 2022.

The petitioner is the respondent in Miscellaneous Civil Appeal 68/2019 which is decided by District Judge-2, Amravati vide judgment dated 15.02.2020.

2. The learned District Judge-2, Amravati allowed the appeal and set aside the order dated 02.08.2019 passed by the trial Judge in RMJC 97/2008 whereby the trial Judge refused to condone the delay caused in preferring application for setting aside *ex-parte* judgment in Special Civil Suit 5/2005.

3. The learned counsel for the respondent at whose behest the appeal is allowed by the judgment impugned invites my attention to the decision in ***Rattan Chand and others v. Mori (dead) by L.Rs. And others (2010) 11 SCC 768*** and in particular to the observations in paragraph 8 to

substantiate her contention that by accepting costs of Rs.7000/- (Rupees Seven Thousand) the present petitioner has forfeited right to challenge the judgment impugned.

4. It is not in dispute that the Appellate Court imposed costs of Rs.7000/- (Rupees Seven Thousand) which the present petitioner received.

5. However, it would not be necessary to delve deeper in the submission that acceptance of costs *ipso facto* precludes challenge to the judgment, since on merits I am satisfied that no case is made out for interference in writ jurisdiction.

6. The jurisdiction exercise by the Appellate Court is one of discretion. Unless the exercise is shown to be demonstrably arbitrary, I would ordinarily not exercise writ jurisdiction. The Appellate Court has given certain reasons for condoning the delay and the High Court ought not to substitute its own view.

7. I am not inclined to exercise writ jurisdiction and consequently this petition is dismissed.

JUDGE

NSN