

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

WRIT PETITION NO. 1346 OF 2022

Husain Khan Haji Kale Khan and anr Vs. Subhan Khan Haji Kale Khan 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. C.A.Joshi, Advocate for the petitioners
Mr. S.S.Sarda, Advocate for Respondent No.1
Ms. M.M.Barabde, AGP for Respondent Nos. 2 and 3

CORAM : AVINASH G. GHAROTE, J.
DATE : 29/07/2022

1] The petition challenges the judgment dated 18.9.2021 whereby the application for condonation of delay of 52 days in filing an application for setting aside an exparty decree dated 27.8.14 has been rejected (page 72).

2] Mr. Joshi, learned counsel for the petitioner submits that, to justify the delay of 52 days, a medical certificate of one of the applicants was filed, inspite of which the learned Court below has rejected the application. He submits that the principle applicable requires a liberal approach to be adopted while condoning the delay and considering the quantum, the same needs to be condoned by setting aside the impugned order. He submits that any inconvenience which may be caused to the respondent can be compensated by cost, for which the petitioner is willing to pay Rs. 20,000/- (Rupees Twently Thousand only).

3] Mr. Sarda, learned counsel for the respondent vehemently opposes and submits that the delay was intentional and there is no justifiable explanation.

4] The position regarding consideration of an application for condonation of delay has been considered by the Hon'ble Apex Court in **Esha Bhattacharjee vrs Management Committee Of Raghunathpur Nafar; (2013) 12 SCC 649**, in which it has been held that liberal pragmatic approach has to be adopted while considering the application, in light of which, considering the quantum of delay which is only 52 days, I do not see any reason why the ground of delay is not to be accepted.

5] Perusal of the impugned order shows that the learned Court below has gone into the technicalities, which was impermissible. Considering the extent of delay, I do not therefore see any reason to affirm the impugned order, as it is directly opposed to the principle laid down in **Esha Bhattacharjee** (supra). The impugned judgment is therefore quashed and set aside and the application as filed by the petitioner is allowed, however, subject to cost of Rs. 20,000/- (Rupees Twenty Thousand only) to be paid to the respondent, as a condition precedent, which has been agreed to be paid by Mr.Joshi, learned counsel for the petitioner.

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The petition is allowed in above term.

JUDGE

Rvjalit