

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

WRIT PETITION NO. 1500 OF 2020

1) M/s. Shri Balaji Traders,
through its Proprietor Shri Shankarlal
Chandak, Aged about 60 years,
Occupation – Business,
C/o Indira Cloth Stores, Naya Bazar,
Balasore - 756 001 (Orissa).

2) Shri Shankarlal s/o Sunderlal Chandak,
Aged about 60 years, Occupation – Business,
Proprietor of M/s. Balaji Traders,
C/o Indira Cloth Stores, Naya Bazar,
Balasore – 7560001 (Orissa).

.... **PETITIONERS**

VERSUS

Shri Damodardas Rameshwardas Bhutda
(HUF), through Karta Shri Dilip
Damodardas Bhutda, Aged about 57 years,
Occupation – Business, Proprietor of
M/s. Bhutda Dall Mill, having office at
1247, Bhutda Bhawan, Anaz Bazar,
Itwari, Nagpur – 440 002.

.... **RESPONDENT**

Mr. S.V. Purohit, Counsel for the petitioners,
Mr. S.V. Bhutada & Mr. Y.J. Maheshwari, Counsel for the respondent.

CORAM : ROHIT B. DEO, J.
DATED : 12th APRIL, 2022

ORAL JUDGMENT :

Heard. **Rule.** Rule made returnable forthwith. With consent, the

petition is heard finally.

2. The petitioners are the original defendants in Special Civil Suit 247/2015 which was instituted by the respondent-plaintiff seeking money decree.

3. It is common ground that the suit came to be decreed *ex parte* vide judgment dated 19-9-2016 rendered by the learned Civil Judge (Senior Division), Nagpur.

4. The defendants preferred an application purportedly under Order IX Rule 13 of the Civil Procedure Code (Code) for setting aside the *ex parte* judgment and decree and since the said application was preferred beyond limitation, a separate application under Section 5 of the Limitation Act, 1963 (Act) seeking condonation of delay of 131 days was preferred. The application seeking condonation of delay came to be registered as Miscellaneous Judicial Case 184/2017, and is decided by the learned Civil Judge (Senior Division), Nagpur vide order dated 08-8-2019.

5. The learned Civil Judge (Senior Division), Nagpur refused to condone the delay, and consequently the application for setting aside

the *ex parte* judgment and decree in Special Civil Suit 247/2015 was not registered.

6. Parties have adduced evidence in support of the respective contentions.

7. The defendants saddled the entire blame on their Counsel Mr. M. (hereinafter referred to as the “Counsel”). According to the defendants, their Counsel assured that he would effectively defend them in the suit and shall file written statement in the matter. The defendants contended that the Counsel was negligent and did not take any step to protect their interest and it was only when the notice in execution was served, that the defendants contacted their Counsel who did not co-operate. According to the defendants, it was the duty of the Counsel to keep them informed of every date of hearing and that since the Counsel was callous, negligent and careless in performing his professional duty, the delay may be condoned.

8. Perusal of the application preferred by the defendants reveals that there is no averment that as a fact, the written statement was drafted, signed and affirmed, and that the Counsel did not file on record such written statement. The application contains rambling and

inherently incredible statement like the defendants were assured by the Counsel that the written statement will be filed. How a written statement, which is not drafted, not signed and affirmed by the defendants, was to be filed by the Counsel, is left to imagination. In my considered view, dishonesty is writ large on the face of the pleadings in the application and unfortunately, as this Court is noticing in several matters, the Counsel is blamed for the gross negligence of the litigants.

9. In response to a query, whether the defendants have initiated any action against the Counsel, Mr. S.V. Purohit made available for my perusal a document dated 28-2-2017 purporting to be a complaint and allegedly addressed to the Bar Council of Maharashtra and Goa and District Bar Association, Nagpur. An affidavit dated 04-4-2022 is placed on record in which the petitioner-Shankarlal Chandak has averred that the complaint dated 28-2-2017 was sent by Registered Post and then he visited the office of the Bar Council of Maharashtra and Goa and enquired about the status of the complaint. A statement is made in the affidavit that Shankarlal Chandak was informed by the Bar Council that the complaint was pending and that he would receive an action taken report in due course. In paragraph 4, the petitioner-defendant Shankarlal Chandak again further asserts that he again visited the

office of the Bar Council of Maharashtra and Goa in 2020 and he was told that it was in view of the pandemic that the decision on the complaint is delayed and once the situation improves, appropriate action shall be taken by the Bar Council.

10. Considering that serious allegations were levelled against a learned Member of the Bar, the Registrar (Judicial) of this Court was requested to ascertain from the Bar Council of Maharashtra and Goa, whether there is any complaint preferred against the Counsel and if such complaint is preferred, the status thereof. The report of the learned Registrar (Judicial) is that enquiry has revealed that no complaint in the prescribed format was received against the Counsel and no proceedings are pending. Even if it is assumed, that a complaint, not in the proper format, was, as a fact, sent by the petitioners to the Bar Council of Maharashtra and Goa, the fact that the Bar Council of Maharashtra and Goa has informed that no complaint in the prescribed format was received and no proceedings are pending, falsifies the assertion in the affidavit that the petitioners approached the office of the Bar Council of Maharashtra and Goa in 2019 and 2020 and were assured that the complaint is pending and that appropriate action shall be initiated against the Counsel. I have no doubt in my mind that even if it is assumed that an informal

communication, that is which is not in the prescribed format, was sent by the petitioners as alleged, the same was a tactical move to make out a case that the Counsel was negligent and that the defendants ought not to suffer in the process, particularly, since the averments in the application seeking condonation of delay are devoid of any logic in the sense that the attempt is to persuade the Court to believe that the Counsel was expected to file a written statement though none is drafted, signed and affirmed by the defendants.

11. On a holistic consideration of the matter, I am not inclined to interfere in writ jurisdiction.

12. The petition is dismissed.

JUDGE

adgokar