

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

31 WRIT PETITION NO.1423 OF 2023

**BHAGWAN NAGOJI DHALE AND ANOTHER
VERSUS
MILIND BALAK MANDIR THROUGH ITS PRESIDENT SHANTABAI
SHRIDHARRAO JOGDAND AND ANOTHER**

...
Advocate for Petitioners : Mr. Krishna P. Rodge

...
CORAM : SHARMILA U. DESHMUKH, J.

DATE : 08-02-2023

PER COURT :

. By this petition, a challenge is to the order dated 08.12.2022 rejecting the petitioners' application for readmission of R.C.A. No.74 of 2011 under the provisions of the Order-XLI, Rule-19 of the Code of Civil Procedure, 1908 (hereinafter referred to as the 'CPC').

2. R.C.A. No.74 of 2011 was instituted by the petitioners being aggrieved by the judgment and decree dated 13.06.2011 passed in R.C.S. No.154 of 2010 which was instituted by the respondents - plaintiffs seeking order of perpetual injunction.

3. After filing of R.C.A. No.74 of 2011, the notices were issued and subsequently the paper-book charges were required to be

paid which were not paid.

4. Heard the learned counsel for the petitioners.

5. The learned counsel for the petitioners submits that in the year-2013, the petitioner no.2 suffered from serious ailment and for the purpose of taking the treatment, the petitioner nos. 1 and 2 shifted to Mumbai and as such due to the ailment, the petitioner no.2 was completely bed ridden and petitioner no.1 was taking care of her. He further submits that as such the petitioners could not pursue R.C.A. No.74 of 2011 and the same came to be dismissed on account of non-payment of the paper-book charges and due to absence of the petitioners and their counsel. He further submits that sufficient explanation has been provided by way of application dated 24.08.2022 and as such by imposing some costs petitioners be permitted to pursue the appeal.

6. Considered the submissions of the learned counsel for the petitioners.

7. The petitioners had filed R.C.A No.74 of 2011 as against the decree of the year 2011. The same was dismissed for want of deposit of paper book charges and due to absence of the appellant.

The petitioners filed Civil Misc. Application No.106 of 2022 for readmission of the R.C.A. No.74 of 2011. The Appellate Court passed order below Exh.1 in Civil M.A. No.106 of 2022 and observed that Medical Certificates produced on record *prima facie* show that the petitioner no. 2 was suffering from certain ailments, however in the medical certificate there is no reference that the patient was or is bed ridden or cannot move. Thus the medical certificate does not support the contention of the applicants. It is also observed by the Appellate Court that as the appellant and his counsel were remaining absent from time to time, for the purpose of securing the presence of the appellant, Court notice was issued which returned unserved as the appellant was not residing at the address given in the appeal memo.

8. It is thus apparent that even the Appellate Court has taken precautions before passing the order of dismissal dated 28.09.2016 for non-prosecution.

9. The law of limitation though is harsh, is required to be applied. Section 5 of the Limitation Act permits the condonation of the delay, if sufficient cause is being shown. Upon perusal of the application, in my opinion, no sufficient cause has been made out for condoning the delay of six years. The submission of the learned

counsel for the petitioners that no prejudice will be caused to the respondents, cannot be sustained for the reason that in the year 2011 by passing of the decree in R.C.S. No.154 of 2010 valuable rights have accrued in favour of the respondents which cannot be permitted to be now displaced in the year 2023 on account of the negligence on part of the petitioners. In my opinion, the imposition of the costs will not be a remedy to the prejudice which will be caused to the respondents by allowing the application under Order-XLI, Rule-19 of the CPC.

10. For the aforesaid reasons, there is no infirmity in the impugned order. Writ petition stands dismissed.

(SHARMILA U. DESHMUKH, J.)

GGP