

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

WRIT PETITION NO.2916 OF 2018

LOBHAJI VITHAL HIRVE

VERSUS

RAVIKANT NARSINGRAO SHINDE AND ANOTHER

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Advocate for Petitioner : Mr. Taher Ali Quadri

Advocate for Respondent No.2 : Mr. B.N. Gadegaonkar

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CORAM : NITIN B. SURYAWANSHI, J.

DATE : 13th APRIL, 2023

PER COURT :

1. Regular Civil Suit No.440/2011, filed by respondent – No.1 original plaintiff against the petitioner – original defendant No.1 and respondent No.2 – original defendant No.2 for recovery of possession of the suit property under section 6 of the Specific Relief Act was decreed *ex parte*. Petitioner, thereafter belatedly filed Misc. Civil Application RJE No.144/2014 for condonation of delay and setting aside *ex parte* decree. The said application is rejected by the trial court and the said rejection is confirmed by the appellate Court.

2. Heard learned advocate for petitioner and learned advocate for respondent No.2. Perused the grounds raised in the petition, annexures thereto and the impugned order. Though respondent No.1 is served by paper publication, he has not caused appearance.

3. Petitioner claims that the suit property is leased out to him by respondent No.2 Nanded Waghala City Municipal Corporation. Since decree is passed *ex parte*, opportunity of being heard is not given to the petitioner. Petitioner has tried to explain delay caused in the delay condonation application. However, the same was not considered by the trial Court as well as appellate Court. In my opinion, since substantial right of petitioner in the immovable property is involved in present case, opportunity of being heard needs to be given to the petitioner. Hence, delay condonation application filed by petitioner deserves to be allowed by setting aside the impugned orders.

4. In the result, writ petition is allowed in terms of prayer clauses 'B' and 'C'. Misc. Civil Application RJE No.144/2014 is allowed, subject to the petitioner paying cost of Rs.25,000/- in the trial Court.

(NITIN B. SURYAWANSHI, J.)