

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

WRIT PETITION NO. 14903 OF 2021

Namdeo Gyanoba Mutekar

.. Petitioner

Versus

Sushilabai Kashinath Pasarge
and others

.. Respondents

Shri D. R. Jayabhar, Advocate h/f Shri S. D. Jayabhar, Advocate
for the Petitioner.

Ms. Rakhi V. Sundale, Advocate for the Respondent Nos. 4 and 5.

CORAM : SHARMILA U. DESHMUKH, J.

DATE : 06TH FEBRUARY, 2023.

FINAL ORDER :

. Heard. By this petition, the petitioner is aggrieved by the order dated 09th July, 2020 passed in Misc. Application No. 64 of 2015 in R.C.S. No. 25 of 1997, whereby petitioner's application for condonation of delay in filing the application for restoration of suit came to be rejected.

2. The application was filed on behalf of the petitioner for condonation of delay of 14 years and 65 days in filing restoration application in R.C.S. No. 25 of 1997. It was case of the petitioner in the restoration application that the petitioner had filed another civil suit bearing R.C.S. No. 07 of 1982 before the Trial Court and the petitioner use to come to attend both the suits and on 26.06.2001, the Trial Court dismissed R.C.S. No. 25 of 1997 for non prosecution.

3. Learned counsel for the petitioner submits that, the

petitioner is an illiterate person and, therefore, he could not distinguish between both the suits and he presumed both suits are pending before the Court. In support of his contentions the learned counsel for the petitioner relies on the following decisions:

- I. Raj Kishore Pandey Vs. State of U. P. and others reported in AIR 2009 SC 1640.
- II. Smt. Lachi Tewari and others Vs. Director of Land Records and others reported in AIR 1984 SC 41.
- III. Rafiq and another Vs. Munshilal and another reported in AIR 1981 SC 1400.
- IV. Ashok Ravji Vadodriya and etc. Vs. Municipal Corporation of Greater Bombay reported in AIR 2004 Bombay 8.
- V. Hari Kishan Shah Vs. Tilak Raj Bhasin reported in AIR 1972 J & K 19.

4. Considered the submissions of the learned counsel for the petitioner and perused the application for condonation of delay and the impugned order.

5. Section 5 of the Limitation Act permits the Courts to condone the delay upon sufficient cause being shown. In the present case there is no explanation much less sufficient explanation for the delay of 14 years and 65 days. There are no details which are furnished and it is admitted position that the petitioner was attending the second suit and as such it cannot be said that he was not aware of the legal proceedings. It is not expected that day to day delay of 14 years and 65 days be explained, but it is required that an explanation sufficient to

condone such a considerable delay to be on record. In the present case, there is absolutely no explanation for the delay of 14 years and 65 days and hence it can be presumed that the petitioner was negligent. It is also not stated that he was in touch with his counsel or that he had exercised due diligence in prosecuting the legal proceedings. Considering the negligence shown by the Petitioner, I do not find it fit to exercise discretion in favour of the Petitioner.

6. The decisions relied upon by the learned counsel for the petitioner deals with the situation where sufficient cause has been made for condoning delay. In the present case as there is no explanation which has been provided and the delay is considerable, the decisions relied upon by the learned counsel for the petitioner does not assist the case of the petitioner.

7. Writ petition is devoid of merits and same is dismissed. There shall be no order as to costs.

[SHARMILA U. DESHMUKH, J.]

bsb/Feb. 23