

Gaikwad RD

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 10525 OF 2019**

Dilip Govind Pingale

...Petitioner

Versus

Kalpana Dilip Pingale

...Respondent

Mr Suresh M Kamble, *for the Petitioner.*

None for the Respondent.

CORAM: Neela Gokhale, J.

DATED: 2nd May 2023

PC:-

1. The present Petition assails the judgment and order dated 8th July 2019 passed by the learned *Adhoc* District Judge 2, Thane. By the impugned judgment and order the learned District Judge was pleased to reject the application for condonation of delay in filing a restoration application seeking restoration of the Petition under Section 25 of the Guardianship and Wards Act, 1890.

2. The Petitioner has contended that he was not aware of the dismissal of the Guardianship Petition as his advocate had failed to inform him about the same. The Respondent contested the delay condonation application on the ground that the Petitioner was well aware of the dismissal of the Guardianship Petition as he was

already contesting simultaneous domestic violence proceedings before the learned Judicial Magistrate First Class.

3. The learned District Judge was pleased to record that the roznama in the matter indicated that the Guardianship Petition came to be dismissed in default as the Petitioner consistently remained absent. The learned Court further observed that there was nothing on record to indicate that the Petitioner was unaware about the dismissal order since admittedly he was contesting the proceedings in the Thane Court in the domestic violence matter and was regularly appearing in that matter.

4. Mr Kamble, learned counsel appears for the Petitioner and states that the Petitioner was unwell and hence was unable to attend the proceedings. He further states that he had informed his previous advocate and requested him to convey the reason of his absence to the learned District Judge but apparently the advocate concerned failed to do so and consequently he was unable to move the restoration application within the limitation period.

5. Perused the records of the case. It appears that the Petitioner has been negligent in attending the Guardianship Petition. The impugned order also records that the Petitioner was aware of the dismissal of the Guardianship Petition but failed to file the restoration application within the limitation period.

6. Be that as it may, no purpose would be served by disallowing the restoration of the Guardianship Petition on the ground of delay

in seeking its restoration to file. The matter involves custody of minor children and access of the father to meet them. Rejection of the restoration application will deprive the Petitioner from agitating his plea for custody and access to his minor children. Perhaps the ultimate deprivation may be that to the children who may also desire to meet their father. Only a trial on merits can determine finally the issue.

7. In view of the above, I am of the considerate opinion that justice requires that the delay in filing the restoration application be condoned however, subject to the payment of cost of Rs.10,000/-, which the Petitioner will pay to the Respondent wife. The Petitioner shall deposit the said amount in the Nazir office of the District Court, Thane, within a week from the date of this order and the Respondent wife shall be entitled to withdraw the same without any further application in that regard.

8. The Writ Petition is thus allowed.

9. The Restoration Application bearing Civil Miscellaneous Application No. 63 of 2015 is restored to the file of the learned District Judge Thane for its consideration on merits. No order as to costs.

(Neela Gokhale, J)

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