

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO. 1468 OF 2019

Ashish Shankarrao Nakhate __ Vs. __ Dadarao Dhanajirao Jambhulkar

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. U.K.Bisen, Advocate for petitioner
Mr. M. Rajkindawar, Advocate for Respondent.

CORAM : AVINASH G. GHAROTE, J.
DATE : 05/04/2023

1] Heard Mr. Bisen, learned counsel for the petitioner and Mr. Rajkondawar, learned counsel for the respondent.

2] The petition challenges the order dated 7.2.2019 passed by the learned Joint Civil Judge, Junior Division, Nagpur, rejecting application below Exh.46 for setting aside the 'no WS' order.

3] It is contended that the counsel initially engaged by the petitioner/defendant was suffering from blood cancer, as a result of which he did not represent the petitioner/defendant, due to which the order dated 20.7.2016 came to be passed, proceeding the suit without WS of the defendant. The subsequent application at Exh.46 as indicated above has been rejected by not accepting the reasons

given by the petitioner/defendant for explanation of the delay in filing the application.

4] Though Mr. Rajkondawar, learned counsel for the respondent/plaintiff vehemently opposes the contention, submitting that there are no bonafides and there is absence of sufficient cause, relying upon **Atcom Technologies Limited vrs Y. A.Chunawala and Company and ors, (2018) 6 SCC 639**, it is however material to note that the provisions of Order 8 Rule 1 proviso of the C.P.C., has been held to be directory in nature and even in **Atcom Technologies** (supra), the delay was condoned by the Hon'ble Apex Court by imposing costs.

5] It is a trite position of law that matters are to be decided on merits and not in default, considering which the impugned order is hereby quashed and set aside, however, at a costs of Rs.26,000/- to be deposited with the High Court Bar Association, Nagpur. The amount to be spent for the purpose of procuring high speed scanner to be supplied to Taluka Bar Association. The payment of costs would be condition precedent.

6] The learned Trial Court shall accept the WS of the petitioner and proceed ahead with the suit with all due haste.

7] The petition is allowed in above terms.

JUDGE

Rvjalit