



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

WRIT PETITION NO. 4447 OF 2023

RAMESH S/O. MADHUKAR MUCHULWAR VS. VIJAY S/O. KAWADUJI NYALEWAR AND OTHERS

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Mr. S. R. Charpe, Advocate for petitioner.

CORAM : ANIL S. KILOR J.

DATE : AUGUST 29, 2023

In this matter an ex parte decree came to be passed on 31/08/2016 in Regular Civil Suit No.95 of 2003 seeking various reliefs including the relief of preferential right of purchase of defendants' share in the suit property and other connected reliefs including the alternative relief of decree of partition and separate possession.

2. As the decree was passed ex-parte, the petitioner/defendant Nos.2 to 4 preferred an application under Order 9 Rule 13 of Civil Procedure Code, 1908 (CPC) along with an application for condonation of delay caused in filing the same. The learned 3rd Joint Civil Judge Junior Division, Gadchiroli, rejected the application for condonation of delay, which came to be challenged in an appeal

under Section 104 read with Section 43 Rule 1(d) of the CPC, before the Principal District Judge, Gadchiroli. The learned lower appellate Court vide its impugned judgment and order dated 18/07/2022, dismissed the appeal, the same is under challenge in this writ petition.

3. It is the case of the petitioner that the petitioner and respondent Nos.25 and 26 are the real brothers and their father was looking after all other affairs of the above referred suit and their father obtained signatures on Court papers and except putting signatures, the petitioner and respondent Nos.25 and 26 did not take any part in any proceeding and they were not aware any of the details. It is contended that, after the death of the father of petitioner on 28/04/2010, on receiving notice in the month of January, 2018 in execution proceeding they got knowledge of the ex parte decree and thereafter the steps were taken for filing the necessary proceeding.

4. Contrary to this, both the Courts below have found from the record that the respondent Nos.25 on few occasions appeared in the matter and he had knowledge about the proceeding even after the death of his father. The application for

condonation of delay was filed jointly by the petitioner and respondent Nos.25 and 26 and despite the same, the fact of having knowledge to respondent No.25, was suppressed and not stated in the application.

5. The learned trial Court while rejecting the application has recorded following findings :-

“43. *The applicants are well educated and serving in the Govt. Department. It is clear from the record that, the applicants have in possession over certain portion of suit property. It is also admitted that, tenants on the suit property paying rents to the applicants. The suit was defendant by adv. Shri.Akhade, who resides a half k.m. from the house of applicants.*

44. *This court has already observed that, the applicants had knowledge about the suit. As it reveals from records of the proceeding.*

45. *It needs to be noted, the applicant no.3 is attending one criminal case at Chandrapur since 2008 and attending each and every date. So, it is clear that, applicants no.3 is aware of consequences of non-appearance. In short, he is aware about the court proceeding.*

46. *The record shows that, some applicant are resident of another district. However, it is admitted in the cross by applicant no.3, that, whenever, they require to meet the relative, they come to Gadchiroli.*

47. *While appreciating the aforestated material, it needs to be noted that, applicants should have to contact their lawyer, who resides just a half k.m. from their house. Applicant no.3 admitted that, he*

knows adv. Kishor Akhade, who is the son of Sri Adv.S.K.Akhade despite, the availability of advocate, they did not meet them and asked about the proceeding. This fact shows their negligent toward their cause. The applicants are educated, they could even have check their case status on electronics means. However, they have not opt for it.

48. *It needless, to mention that, the applicants are receiving the rents of the suit property. However, they are negligent in enough to look the case of which, they are getting the fruits.”*

6. The learned lower appellate Court after considering the above referred findings and other evidence recorded by the learned trial Court has come to the conclusion that the petitioner and respondent Nos.25 and 26 are negligent and since no sufficient ground have been pointed out for condonation of delay, the application was rejected.

7. In the circumstances, I do not find any error in the findings recorded by both the Courts below. Accordingly, the Writ Petition is dismissed. No costs.

[ANIL S. KILOR J.]