



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR
WRIT PETITION NO. 5121 OF 2022**

Ramesh S/o Mithulal Kichare,
Aged about 66 years, Occ. Retired,
R/o Plot No. 115, Gharkul NIT Yojana, Near
K.D.K. College, Nandanvan, Nagpur 440 009

...Petitioner

// VERSUS //

1. Laxmibai Wd/o Bhaurao Charlewar
Aged about 69 years,
2. Haribhau S/o Bhaurao Charlewar,
Age about 44 years,
3. Anil S/i Bhaurao Charlewar
Age about 43 years
4. Deepak S/o Bhaurao Charlewar
Age about 41 years
5. Shekhar S/o Bhaurao Charlewar
Age about 39 years
6. Smt. Pramila Wd/o Hari Patriwar
Age about 38 years
7. Ku. Pratibha Bhaurao Charlewar
Age about 35 years
Respondent Nos 1 to 7 all resident of Plot No.
435, Near Gayatri Convent, New Nandanwan,
Nagpur
8. Smt. Manda Wd/o Vasantao Dalal (dead)
through legal representatives respondent no.9
9. Shri Jaydeep Vasantao Dalal
Age about 46 years, Occ. Service
R/o Near Balaji Mandir Mehekar,
Ta. Mehekar, Dist. Buldhana

... Respondents

Shri S.A.Kalbande, Advocate for the petitioner.

Shri S.Raisuddin, Advocate for the respondent nos. 1 to 7.

CORAM : ANIL S. KILOR, J.
DATED : 10th OCTOBER, 2023.

ORAL JUDGMENT :

Rule. Rule made returnable forthwith. Heard finally by consent of the parties.

2. In this writ petition, the challenge is raised to the order dated 8th March, 2022 passed by the learned District Judge-9, Nagpur in Misc. Civil Application No. 849 of 2017, thereby the application under Section 5 of the Limitation Act, 1963 for the condonation of a delay in filing an application for setting aside the order dated 29th August, 2017 in R.C.A. No. 306 of 2009, came to be rejected .

3. The delay is of 42 days. The explanation provided is for the period 1st November, 2017 to 26th November, 2017. However, the period from 17th October, 2017 to 31st October, 2017 and from 27th November, 2017 to 29th November, 2017 has not been explained which comes to 16 days.

4. The learned counsel for the respondent is strongly opposing the present petition and supports the impugned order passed by the learned District Judge, Nagpur.

5. In view of the judgment of the Hon'ble Supreme Court in the case of *Esha Battcharjee Vs. Managing Committee of Raghunathpur Nafar Academy and others*¹, I am of the opinion that the learned

¹ MSNU/DV/0932/2013

Appellate Court ought to have allowed the application by condoning the delay. Thus, I have no hesitation to hold that the learned Appellate Court has committed error in rejecting the application. Accordingly, I pass the following order.

- i. The writ petition is allowed
- ii. Impugned judgment and order dated 8th March, 2022 passed by the learned District Judge-9, Nagpur is hereby quashed and set aside, thereby the application for condonation of delay in filing restoration is allowed.

[ANIL S. KILOR, J.]