

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR
WRIT PETITION NO. 5349 OF 2022**

Rajkumar Dattuprasad Mishra
Aged about 48 years, Occ. Business,
R/o Shivaji Chowk, Amravati,
Tq. & Dist. Amravati

...Petitioner

// VERSUS //

1. Rajesh Pawankumar Sarraiya
Aged 48 years, Occ. Agriculturist,
2. Pankaj Pawankumar Sarraiya
Aged 46 years, Occ. Agriculturist
3. Neeraj Pawankumar Sarraiya
Aged 42 years, Occ. Agriculturist
Resident of 1 to 3 Lata's Wada, Railway Station
Chowk, Amravati, Tq. & Dist. Amravati
4. Munna Dattuprasad Mishra
Aged 60 years, Occ. Business
5. Chagan @ Ganga Dattuprasad Mishra
(Deceased), through its Legal Heirs
- 5-a Smt. Gita Gangaprasad Mishra
Aged 56 years, Occu.Household
- 5-b Pooja Gangaprasad Mishra
Aged 32 years, Occu - Education
- 5-c Ashish Gangaprasad Mishra
Aged 29 years, Occu – Education
Address of respondent nos. 4 & 5(a)(b)(c)
Suraksha Colony, Tapovan area, Amravati, Tq.
& Dist. Amravati

... Respondents

Shri N.S.Bhelkar, Advocate for the petitioner.

Shri P.S.Raut, Advocate for the respondent nos. 1 to 3.

CORAM : ANIL S. KILOR, J.

DATED : 24th APRIL, 2023.

ORAL JUDGMENT :

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

2. In this writ petition, order below Exhibit 1 dated 5th May, 2022 rejecting the application for condonation of delay in preferring the appeal against the judgment and decree dated 4th February, 2019 passed by the learned Joint Civil Judge, Senior Division, Amravati in Regular Civil Suit No. 360 of 2018, decreeing the suit filed for possession of the suit property, is under challenge.

3. There is a delay of four months and eighteen days in filing the appeal. The reasons for rejecting the application was that petitioner and his lawyer was continuously absent.

4. Shri Bhelkar, learned counsel for the petitioner submits that the brother of the petitioner was seriously ill and the petitioner was all the time busy in his treatment and who then unfortunately died.

5. He further points out that the decree was passed on 4th February, 2019 and application for condonation of delay in filing an appeal was filed on 17th August, 2019. Thereafter, there was pandemic and for this reason as well he could not attend the proceeding and on 5th May, 2022, the application for condonation of delay was rejected.

6. On the other hand, Shri Raut, learned counsel for the respondent nos. 1 to 3 strongly opposed the present writ petition and submits that after rejection of the application for condonation of delay,

the petitioner moved an application for restoration, which was also rejected on 8th July, 2022. He, therefore, submits that the petitioner was not diligent in pursuing the remedy. He therefore, prays for dismissal of the present writ petition.

7. Admittedly, the delay is not an inordinate delay and considering that the part of the period was pandemic period, the petitioner cannot be said to be at fault for not attending the proceeding. Moreover, satisfactory reason of serious illness of his brother was there.

8. As far as filing of application for restoration after rejection of application for condonation of delay, the same can be termed as wrong advise given to the petitioner. However, the same cannot be the reason for not condoning the delay and holding against the petitioner.

9. Moreover, considering the subject matter, I am of the opinion that the petitioner must get an opportunity to agitate his grievance on merit and pursue his remedy. Accordingly, I pass the following order.

i. The writ petition is allowed

ii. Order below exhibit 1 dated 5th May, 2022 passed by District Judge-6 Amravati is hereby quashed and set aside and thereby application for condonation of delay in filling the appeal is allowed.

SACHINDANAND
K NAIR

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by
SACHINDANAND
K NAIR
Date: 2023.05.02
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[ANIL S. KILOR, J.]