

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

Writ Petition No. 5869 of 2022

Mahadeo Tukaram Ingale

Vs.

Shri Vitthal Rakumai Sanstha, Sonala and another

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Mr. S.G.Gandhe, counsel for the Petitioner.

None for the respondent No.1.

Mr. S.V.Deshmukh for respondent No.2.

CORAM : ANIL S. KILOR, J.

DATED : 05.01.2023.

The present writ petition is arising out of order below Exhibit-1, dated 16/06/2022 passed by the learned District Judge-1, Khamgaon, District Buldhana in M.J.C. No.5 of 2017, rejecting the application for condonation of delay.

2. I have heard the learned counsel for the respective parties.

3. Shri Gandhe, learned counsel for the petitioner, submits that on the date of dismissal of appeal i.e. on 11/12/2014, though the petitioner was present in the Court, his lawyer filed a *pursis* of 'no

instructions’ and accordingly, the Court dismissed the appeal. The learned counsel submits that the applicant applicant is not well educated, he could not get the knowledge of dismissal of the appeal and when he got the knowledge, he preferred an application for condonation of delay along with application for restoration on 28/04/2016. However, subsequently, as the matter was settled between the parties, both the parties filed a joint *pursis* for withdrawal of application for condonation of delay, which was permitted to be withdrawn by the trial Court vide order dated 22/07/2016. It is further submitted that however, later on, the respondents resile from the statement and therefore, another application for condonation of delay with application for restoration was filed on 14/03/2017, which came to be rejected by the Appellate Court. It is submitted that the delay was not intentional, but *bona fide* and the said fact had not been considered by the learned Trial Court. It is submitted that while considering the application for condonation of delay, the approach of the Court should be liberal and pragmatic. For this purpose, he placed reliance on the judgment in the case of **Esha Bhattacharjee v. Managing Committee of Raghunathpur Nafar Academy**, reported in (2013) 12 SCC 649.

4. On the other hand, Shri Deshmukh, learned counsel for the respondents, supports the impugned order and submits that the delay is huge and no explanation was afforded in the application for condonation of delay and in absence of such explanation, the Court has rightly rejected the said application.

5. I have perused the record and the impugned order. From the record, it is evident that the appeal filed by the petitioners was dismissed on 11/12/2014 and while dismissing the appeal, the learned lower Appellate Court has observed thus:

“The appellant is present. Respondent is also present. The appellant was given sufficient opportunity to argue the matter. Today his Advocate filed no instruction pursis at Ex.26. As noted above appellant was granted sufficient opportunity and even last chance was also granted. The appellant though present but is not addressing the Court on grounds of appeal. In the circumstances, the appeal stands dismissed in default with no order as to costs. Stay vacated.”

6. The petitioner thereafter on 28/04/2016, after more than one and half years moved an application for restoration along with the application for

condonation of delay. In the said application, though he admits that he was present when the appeal was dismissed, he tried to justify the delay by saying that as he is not well educated, he could not get the knowledge about dismissal and when he got the knowledge, he immediately applied for certified copy and filed the application for condonation of delay along with the application for restoration of appeal. In the said application though the petitioner has stated that immediately after he got the knowledge, he applied for certified copy, but he did not give any details and source of information or knowledge. The application is vague and no explanation was afforded by the petitioner in the said application.

7. Thereafter, the said application was withdrawn by filing the joint *pursis* dated 22/07/2016, which does not speak about a compromise. However, because there are signatures of the respondents on the joint *pursis*, it may be presumed that some sort of compromise must have been arrived at between the parties and, therefore, the respondents also signed the said *pursis*.

8. However, the fact remains that without stating about any compromise, the application was

withdrawn. Later on, the petitioner filed another application on 14/03/2017 saying that though the matter was compromised and earlier application was withdrawn, the respondents resile from the statement and, therefore, the second application was filed. While deciding this application vide impugned order, the learned lower Appellate Court has observed thus:

“6. Perused the application. As seen from the record, it is gathered that Reg. Civil Appeal No.14/2009 was came to be preferred by the present applicant. The said came to be dismissed in default on 11.12.2014 due to no instruction Pursis filed by the advocate for applicant. Thereafter, when the applicant came to know about the dismissal order of the appeal, he preferred delay condonation application in MJC No.16/2016 for restoration of the said appeal.

7. The respondents after the receipt of service of notice started talks of settling the matter with the applicant. The respondents also assured the applicant that the execution proceeding before the Sangrampur Court would be withdrawn. Believing the words of the respondents, the applicant withdraw the MJC no.16/2016. The order of MJC No.16/2016 dated 22.7.2016 the Court observed that by filing Pursis Exh.8 the applicant informed that he does not want to proceed with the application and therefore, the MJC was disposed off. On perusal of the said

order it is seen that there was no promise of withdrawing of the execution proceeding before the Sangrampur Court. The Pursis which was filed before the Court vide Exh.8 also does not have any contents about withdrawal of the execution proceeding before Sangrampur Court. The applicant is a matured person of sufficient understanding and therefore, it cannot be said that he signed the Pursis before understanding the meaning of the contents of the Pursis.

8. *The order in JMC No.16/2016 came to be passed on 22.7.2016 however, the present application came to be filed on 14.3.2017. The opportunity was already with the applicant to agitate his right however, he failed to do so. The applicant himself stated in the Pursis Exh.8 in MJC No.16/2016 that he does not want to proceed further. The applicant himself opted not to proceed with the application and therefore, he again he cannot come and agitate to try the application afresh. Considering the above facts and circumstances, I found that the reasons given by the applicant are not believable and therefore, I proceed to pass the following order :-*

ORDER

1. *The application Exh.1 is dismissed.*
2. *No order as to costs.”*

9. Thus, after considering the observations made by the learned lower Appellate Court and also

after considering the fact that in the first application, no proper explanation was given for the delay of about twenty months in filing the application for restoration and subsequent delay is not explained by the petitioner.

10. There is no dispute about the law as laid down by the Hon'ble Supreme Court of India in the case of **Esha Bhattacharjee v. Managing Committee of Raghunathpur Nafar Academy** (supra), wherein the principles that can broadly be considered while entertaining the application for condonation of delay are laid down. In the present case, the petitioner was present in the Court on the date of dismissal of the appeal and while applying for condonation of delay, no justification was given for delay of twenty months caused in filing the application for restoration.

11. In the circumstances, in absence of satisfactory explanation, as required under section 5 of the Indian Limitation Act, I do not find any error committed by the learned lower Appellate Court in rejecting the application for condonation of delay. Accordingly, the petition is dismissed. No order as to costs.