

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

WRIT PETITION NO. 1728 OF 2023

Abhishek Vilas Raut and anr__ Vs. __ Vivek Bhimraoji Dahare

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

Court's or Judge's orders

Mr. A.B.Moon, Advocate for petitioner

CORAM : AVINASH G. GHAROTE, J.

DATE : 30/03/2023

1] Heard Mr. Moon, learned counsel for the petitioner.

2] The petition challenges the order dated 8.8.2022, whereby the learned Appellate Court has condoned the delay of 23 months in filing the appeal (pg.106).

3] It is contended that the plea raised by the respondent of being ailing from 2017 to 2018 and taking treatment is a false plea and therefore, the delay ought not to have been condoned.

4] In order to establish the plea that the respondent no.1 was ailing, two witnesses have been examined, one is Dr. Harish Punde, the Medical Officer of GMC, Amravati at Exh.55 (pg 79) and Dr.Narendra Solanke, Medical Officer, District

General Hospital, Amravati at Exh.93. The witness no.2 Dr.Punde has proved the certificate and OPD Ticket issued by him. This position is also reiterated by Dr.Solanke. Merely because, there are different handwriting in the register, that by itself cannot be a reason to disbelieve the evidence, as in a hospital, where many number of persons are working, this is bound to happen.

5] The principles of condonation of delay has been enunciated by the Hon'ble Apex Court in **Esha Bhattacharjee vrs. Managing Committee of Ragnathpur Nafar Academy, (2013) 2 SCC 649** and it has been held that liberal approach has to be adopted, so that the litigant should not be deprived of his right. The application has been allowed at the cost of Rs.10,000/-, considering which I do not see any reason to interfere in the impugned order. The petition is dismissed. No costs.

JUDGE

Rvjalit